IDAHO

SCHOOL SEARCH RESOURCE GUIDE

Idaho Department of Education

School Climate/Discipline Program

August 2002

Table of Contents

The Idaho Department of Education
School Climate/Discipline Program
is pleased to provide the
"Idaho School Search Resource Guide."

DEVELOPMENT OF THE RESOURCE GUIDE

The ***Idaho School Search Resource Guide*** has been revised from the Virginia School Search Resource Guide with the express consent from Arlene Cundiff, Coordinator, Safe and Drug-Free Schools Programs and Dr. Jo Lynne DeMary, Superintendent of Public Instruction, Virginia Department of Education. The revisions were completed with guidance from the Department of Education, the assigned Deputy Attorney General, and the law office of Eberharter-Maki & Tappen, PA**.**

The ***Guide*** is intended to be used by local school boards, superintendents, building administrators, and school board attorneys in the development and implementation of sound policy. Others who may find the ***Guide*** useful include teachers, school resource officers and parents. Designed to be user-friendly by providing basic practice guidance and sample policies and procedures, the ***Guide*** also includes more in-depth legal references and discussion in its Appendices.

This Guide is intended to be used as a resource. School officials should therefore consult with their appropriate legal advisors concerning applicable state statutes, rules, and case law. Citations to court decisions in other jurisdictions are for information only and do not imply that such decisions would be adopted by, or viewed as persuasive authority by, the courts of this jurisdiction. Further, court decisions after the date of publication of this document may change some legal principles set forth herein.

THE RESOURCE GUIDE AT A GLANCE

I. School Searches: The Basics

This Chapter provides basic, concisely stated definitions and legal principles relative to school searches. These "Basics" are cross-referenced to applicable provisions, which are more fully discussed in Appendix A.

II. Sample Policies, Procedures, Checklists, and Forms

This Chapter includes sample local school board policies and procedures designed to assist educators "to preserve a safe, nondisruptive environment for effective teaching and learning." Checklists which concisely restate some of the most important legal principles are also provided; they are designed to help school officials comply with requirements of the Fourth Amendment by setting forth a series of questions that school officials should be prepared to answer before conducting a suspicion-based search. Several checklists are cross-referenced to applicable provisions in Appendix A; educators using the checklists are encouraged to consult the referenced provisions of Appendix A for more detailed information about applicable legal principles.

APPENDIX A: School Searches: Legal Base and Principles

In this Appendix are cited the United States and Idaho Constitutional provisions governing school searches as well as Idaho statutes. Legal Principles content is derived primarily from the ***School Search Reference Guide*** developed in 1999 by the National Association of Attorneys General. It focuses on published court decisions interpreting the Fourth Amendment of the United States Constitution and provides a broad overview of search and seizure law as it applies to school officials and students.

APPENDIX B: Guidelines Concerning Student Searches in the Public Schools

This Appendix provides guidelines for student searches and Fourth Amendment Protection. Carefully written and appropriately executed school policy that advances a safe learning environment is an intrinsic component of today's school management practice. Local school boards of education have a responsibility to develop school policy that meets the Fourth Amendment standard.

APPENDIX C: Helpful Resources

This Appendix includes a list of credible publications and other resources, which may be of help to local school divisions in policy development, training, and implement of procedures related to searches.

SECTION I

SCHOOL SEARCHES:

THE BASICS

I. SCHOOL SEARCHES: THE BASICS

Editor's Note: Certain provisions of Chapters I and II are cross-referenced with relevant legal principles which are discussed in more detail in Appendix A. Cross-references are presented in brackets. For example, [2.2] means that a more detailed discussion of relevant legal principles can be found in section 2.2 of Appendix A.

Conceptual Framework

Balancing Competing Interests

All searches entail an invasion of privacy. Whether a particular search is legally permissible involves a balancing of competing interests: the individual student's right to privacy and security against the school district's interests in maintaining order, discipline, and the security and safety of other students. Although students do not "shed their constitutional rights . . . at the schoolhouse gate," students in the school setting have a lesser expectation of privacy than members of the general population. In the public school context, however, when "carrying out searches and other disciplinary functions. . ., school officials act as representatives of the State, . . . and they cannot claim the parents' immunity from the strictures of the Fourth Amendments." [1.0 and 2.1] *New Jersey v. T.L.O.*, 469 U.S. 325 at 336-37 (1985).

Importance of School Policy

Best practice involves coherence in the school district's policies, including the student conduct policy, search policy, and procedures for implementing searches. The district's policies should clearly articulate the school district's commitment to provide a safe and disciplined school environment conducive to learning. A student conduct policy should define expectations and rules, including privacy expectations. Idaho law (Idaho Code § 33-512) requires written notice of the student conduct policy to students and their parents; best practice is to notify, or otherwise make available, the written policy on student searches also. Search policies and procedures should carefully balance district's interest in safety and security and student privacy interests.

Reasonable Suspicion

In the school environment (and at school-sponsored activities), a search is permissible where a school official has reasonable grounds—"suspicion," based on the totality of the circumstances, for suspecting that the search will reveal evidence that the student has violated either the law, district policy, or rules of the school. [2.1] Reasonable suspicion must be based on an "individualized suspicion of wrongdoing."

"Reasonable suspicion" goes beyond a hunch or supposition and it must be reasonable not only at its inception but also in its scope. [2.2] The "reasonable suspicion" requirements for a search by a school official differs from the requirements for a search by a law enforcement officer who generally must have a search warrant and "probable cause" based on individualized suspicion. [1.4]

Idaho Code § 33-210, amended in 2002, states that "reasonable suspicion means an act of judgment by a school employee or independent contactor of an educational institution which

leads to a reasonable and prudent belief that a student is in violation of school board or charter school governing board policy regarding alcohol or controlled substance use, or the use or under the influence provisions of §37-2732C, Idaho Code." While this code section applies specifically to suspicion that a student is under the influence of alcohol or controlled substances, "reasonable suspicion" also applies to school searches.

Note: Although this Guide is designed to assist school officials in keeping weapons, drugs, and other contraband out of schools, nothing in the guide should be construed as directing any school official to conduct a search on behalf of any law enforcement agency or for the principal purpose of securing evidence to be used in an adult or juvenile criminal prosecution.

What is a Search?

A search is an examination of a person's property or self with a view to the discovery of contraband (whether illegal or in violation of school rules). In this guide, "contraband" means any property or material which is unlawful to produce or possess and whose possession may be contrary to school district policy.

Categories of Searches

Searches can be categorized as follows:

1. Blanket and random administrative searches which are neutrally administered to all students or certain property.
2. Reasonable suspicion searches involving certain identified individual students.
3. Consent searches.
4. Law enforcement searches based on probable cause.

Each category of searches will be described and "best practices" associated with each will be briefly outlined in this Chapter.

Policies, procedures, and guidelines included in this publication apply to searches on school property and at school functions off school property.

A. BLANKET AND RANDOM ADMINISTRATIVE SEARCHES

Blanket and random administrative searches are typically conducted to serve as a deterrent in the interest of maintaining safe and drug-free schools. These "suspicionless" searches, including group searches, may be conducted only in accordance with formally adopted school board policies which include procedures to ensure that searches are conducted neutrally with the same procedure used for each student "search." Key "best practices" involve written notice to students which may be in the form of a school board district policy (reducing expectations of privacy) and procedures, which ensure that the searches are conducted in a random, systematic, non-selective manner in accordance with a pre-determined formula. Locker searches and metal detector screenings are the most common "suspicionless" searches. Trained drug-detection canines are also sometimes used in blanket "sweeps" of the school,

including lockers, desks, and parking lots. Each student is treated the same in these "searches."

Search	Best Practices
Locker searches	(Notice) Written policies and periodic notice to students (and their parents) which make it clear that the school retains ownership and control of the locker and that the student's use of the locker does not constitute exclusive possession. The policy and notice to students should indicate that use of school lockers is a privilege, not a right. (Neutral plan) Procedures/documentation which ensure a neutral blanket screening or random search.
Use of metal detectors at school entrances	(Notice) Written policies and notice to students (and their parents) which make it clear that persons entering the school are subject to metal detector screening. In addition, written warning notices should be posted conspicuously at the entrances of the school so as to provide notice to visitors that they will be subject to this form of inspection. (Neutral plan) Procedures that carefully limit the discretion of school employees who operate metal detectors and that provides a very "detailed script" for these employees to follow as they search for weapons. It is important that staff are aware that this must remain neutral, not an opportunity to "profile" certain students without a reasonable suspicion.
Use of drug-detection canines	(Notice) Periodic written notice that trained drug-detection canines may be used. Requires planning and sensitivity to limit direct contact with students. Canine sniffs of student lockers in a sweeping fashion do not initially constitute a "search." If however, the dog alerts to a specific locker, then individualized suspicion to search the specific locker exists. Likewise, using dogs to sniff around student automobiles in a sweep of the school parking lot ordinarily does not constitute a search. Educational policy considerations regarding the health and psychological well-being of students also come into play when police trained dogs are brought near students in schools. Sound educational judgment should be used in deciding whether, when, and under what circumstances drug-sniffing dogs will be used in schools.

Use of surveillance cameras	Use of surveillance cameras is not a search. Cameras may not be used in an area where there is a "reasonable expectation of privacy." Examples of these areas are bathrooms, gym locker/changing areas, and private offices unless there is consent by the individual to whom the office is assigned. Cameras are generally acceptable in entryways, hallways, parking lots, buses, cafeterias, supply rooms, and classrooms. It should be noted that some teachers are very resistant to the use of cameras in their classroom, so it is probably best to use cameras only with the cooperation and support of the teaching staff. Giving teachers the option to have cameras in the classroom and notice is best practice. Training of staff is essential if cameras are to used effectively. Staff need to be aware of their role in prevention and apprehension of persons engaged in illegal or inappropriate activities. Signage giving notice of the use of surveillance cameras must be posted, i.e., "WARNING: This facility employs video surveillance equipment for security purposes. This equipment may or may not be monitored at any time."

B. REASONABLE SUSPICION SEARCHES

Definition of "Reasonable Suspicion"

"Reasonable suspicion" means a well-founded suspicion that is based on objective facts that can be articulated. It is more than a mere hunch or supposition, but much less than the level of proof that would be required to impose a disciplinary or other sanction. *Brandin v. State*, 669 So. 2d. 280, 282 (Fla. 1st DCA 1996), *State v. Michael G.,*748 P2d 17 (N.M. App. 1987), *In re William G. , 709 P2d 1287 (Ca. 1985), Matter of Pima Co. Juv. Action*, 733 P2d 316 (Ariz. App. 1987), *In re Alexander,* 270 Cal. Rptr. 342 (2nd Dist. 1990)

A search is a physical examination of a person's property or self with a view to the discovery of contraband (whether illegal or in violation of school rules).

Definition of "Search"

A search may be based on suspicion of either a criminal offense or a violation of district policy or school rules. A search can be for contraband (e.g., drugs, alcohol, explosives or fireworks, and/or prohibited weapons including knives, or more benign but prohibited items such as CD players and cell phones); an instrumentality used to commit an offense or school policy rule violation (e.g., a weapon used to assault or threaten another or burglar tools); the objects acquired as the consequences or results of a crime, an offense or school rule or policy violation (e.g., the cash proceeds of a drug sale, gambling profits, or a stolen item) or other evidence of an offense or school rule violation (e.g., gambling slips, hate pamphlets, records of drug or illegal gambling debts, "crib" notes, or other evidence of cheating or plagiarism, etc.)

What is a "search?"

The following are examples of searches:

- Examining private items or places that are not in the open and exposed to public view.
- Physically examining or patting down a student's body or clothing, including the student's pockets.
- Opening and inspecting personal possessions such as purses, backpacks, bags, books, notes, calendars, appointment books, and closed containers.
- Handling or feeling any closed, opaque item to determine its contents when they cannot be inferred by the item's shape or other publicly exposed physical properties.
- Using extraordinary means to enlarge view or hearing into closed or locked areas, containers or possessions (e.g., using a fiber optic cable and viewer to peer inside a closed locker).
- Reading material in a book, journal, diary, letters, notes, or appointment calendar.

What is not a "search?"

The following are not searches:

- Observing an object in plain view where it is exposed to the public.
- Examining an object after a student denies ownership of the object.
- Examining an object abandoned by a student.
- Detecting anything openly exposed to the senses of sight, smell, or hearing, as long as school officials are located in a place where they have a right to be and they do not use extraordinary means to gain a vantage point (e.g., a male teacher seeing and smelling marijuana or cigarette smoke in the boys restroom).
- Using extraordinary means to enhance sensory perceptions in open areas (e.g., using flashlights or binoculars are not searches).
- Any of the searches listed above with the knowing consent of the individual.

Determining "Reasonableness"

In order for a search to be *reasonable*, a school official must satisfy two separate inquiries:

1. Was the search justified at its inception?
2. Was the search conducted in an appropriate manner, that is, was the actual search reasonably related to the objectives of the search and not excessively intrusive given the type of violation and the age and gender of the student? [2.2]

A search is constitutionally **permissible at its inception** where the school official has reasonable grounds -- based on the totality of the known circumstances -- for suspecting that the search of a specific individual will reveal evidence that the student has violated or is violating either the law or the rules of the school or district policy. Reasonable suspicion is more than a mere hunch or unsubstantiated rumor. [2.3] *Brandin, supra, and TLO, infra Search Conducted by School Official or Teacher as Violation of 4th Amendment or Equivalent State Constitutional Provision,* 31 ALR 5th 229. *See,* generally, Annotation *Admissibility, in Criminal Case, of Evidence Obtained by Private Individual*, 36 ALR 3rd, 553.

A search will be **reasonable in its scope** and intrusiveness where it is reasonably related to the objectives of the search and is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction. [2.4]

Example 1:

When a school official has a reasonable suspicion that a student's purse contains a weapon, a basic search of her purse for the suspected weapon must stop as soon as it is apparent that there is no weapon in the purse. The reasonable scope of the search goes no further than the parts of the purse big enough to contain an object as large as a weapon. Extending the search of the purse into a small zippered pocket inside the purse and removing a small plastic bag containing illegal drugs is likely to be an improper "scavenger hunt" that exceeds the reasonable scope of the search. [2.2]

Example 2:

When a school official has a reasonable suspicion that a student has in his possession an illegal drug such as marijuana, the official may order the student to empty his pockets and examine anything in the pockets that is capable of holding a small quantity of illegal drugs. The reasonable scope of this search includes a probe of the student's personal property including his wallet, in which illegal drugs may be hidden.

Authority to Initiate a Search

To initiate a lawful search, a school official must have reasonable suspicion to believe that:
(1) a law, or school rule, or district policy has been or is being broken;
(2) a particular student(s) has committed the violation
(3) the suspected violation is of a kind for which there may be physical evidence (i.e., contraband, materials used or necessary for the alleged violation, or other evidence); and,
(4) the sought-after evidence would be found in a particular place associated with the student(s) suspected of committing the violation or infraction. Common Facts That Support Reasonable Suspicion.

Common Facts That Support Reasonable Suspicion

The following factors and circumstances may be used in determining whether reasonable suspicion exist to initiate a search. Each factor in the right-hand column is relevant, *but is generally not enough, by itself,* to justify a search.

Factors Justifying a Search

- Observed infraction/offense in progress.
- Observed item believed to be stolen. (Explain.) [2.3.7]
- Observed weapon or portion thereof.
- Observed contraband.
- Smell of burning tobacco or marijuana. [2.3.6]
- Student appears to be under influence of alcohol/drugs. (Explain.)
- Student admits violation.
- Student fits description of suspect of recently reported offense.
- Student(s) flee from vicinity of recent known and observed offense.
- Student(s) flee upon approach of school official [2.3.5]
- *Information provided by others. (See Information Provided by Others, Pg 9.)*
- Threatening words or behavior. (Explain.)
- Incriminating evidence was found during a lawful consent search.
- Incriminating evidence was discovered by a teacher/administrator. *(If this discovery entailed a "search," that search must have been lawful.)*
- Incriminating evidence was turned over by another student.
- Other suspicious conduct *(Must fully explain.)*

Other Relevant Factors generally not enough by itself to justify a search.

- Training and experience of school official conducting the search and familiarity with the particular disciplinary problem.
- Extent of particular disciplinary problem in school.
- Student was previously disciplined for a similar offense/infraction.
- Report of stolen item.
- Student seen leaving area where infractions are often committed (i.e., location where students congregate to smoke).
- Student became nervous or excited when school official approached. (Explain.) [2.3.4]
- Student made a suspicious or "furtive" movement. (Must describe the exact conduct and why it was suspicious.) [2.3.4]
- Student tried to conceal an object from a school official's view.

Searching Multiple Suspects

Is there reasonable suspicion to believe more than one student is in possession of the item(s) being sought? If so, is there reasonable suspicion to believe that each individual to be searched is in possession of the item(s) being sought? (Note: In some situations, the number of suspects may be so small that the entire group may be searched. Courts will consider (1) the size of the group, (2) the strength of the grounds to believe that one of them is the person who committed the offense, (3) the seriousness of the offense, and (4) whether the sought-after evidence could harm others.) [2.3.10]

Be prepared to explain what investigative steps were taken before searching a group of students to narrow the field of suspects.

When Information Is Provided by Others

All source information should be carefully documented, explaining why the source has veracity and is credible and why the information is reliable. The record should indicate when, during the course of the investigation, each particular piece of information was learned, and from what source. An anonymous "tip" standing alone will usually not justify a search unless the information provided is corroborated by independent investigation or observation, or by some other source of information. [2.3.4]

C. CONSENT SEARCHES

A school official may ask for permission to conduct a search at any time. A consent search of a student exists when a student grants the school official permission to search. A student's consent is valid only if given willingly and with knowledge of the meaning of consent. School officials have the burden to prove that the search was voluntary and knowing; this can be difficult to do. Best practice is to obtain the consent in writing using a form on which the student expressly acknowledges that consent was given voluntarily and with knowledge. *A student's refusal to give permission may not be considered as evidence of guilt. [2.6]*

Even when consent is given, it may be terminated at any time, requiring the search to stop immediately. *Note, however, that if the school official already has reasonable suspicion to believe that evidence of an offense/infraction will be found in a particular place, school officials need not rely on consent being given (and not withdrawn) and may conduct a search of that location even over a student's objection*. School officials must be prepared to document all aspects of obtaining permission to search. A consent form and checklist are included in Chapter II. [2.6.4]

Drug Testing Consistent With The District Policy

Drug testing is a search, and can be conducted pursuant to reasonable suspicion, with consent, or as a part of a random program for student's engaged in certain extra curricular activities. Please refer to your District's policy addressing student drug testing for cause or consistent with certain extra curricular activities. *Vernonia School District v. Acton*, 515 US 646 (1995). *Bd. Of Education of Independent Sch. Dist. No. 92 of Pottawatomie Co. et alv. Earls,etal)__US__ (2002).*
Idaho Code §33-210 as amended in 2002 by the Legislature addresses the responsibilities of school districts regarding students who may be using or under the influence of alcohol or controlled substances. The statute outlines the requirement that each board establish a policy to detail the procedures to be followed if a student discloses or is suspected of using or being under the influence of alcohol or controlled substances. When a student is suspected of using or being under the influence, parents and law enforcement must be notified. It should be noted that the statute specifically states that prior disclosure by the student shall not be deemed a factor in determining reasonable suspicion. "Reasonable suspicion" is defined at I.C.§ 33-210 (5) as follows: "an act of judgment by school employee or independent contractor of an educational institution which leads to a reasonable and prudent belief that a student is in violation of school board or charter school governing board policy regarding alcohol or controlled substance use, or the 'use' or 'under the influence' provisions of §37-2732C, Idaho Code." Said judgment shall be based on training in recognizing the signs and symptoms of alcohol and controlled substance abuse. Based upon the board policy, students determined to be in violation of the law and policy may be subject to discipline or safety policies

District employees or contractors are immune from liability for their good faith reporting that they reasonably suspect a student is using or under the influence of controlled substances.

D. SEARCHES INVOLVING LAW ENFORCEMENT OFFICERS INCLUDING SCHOOL RESOURCE OFFICERS

General Provisions

Searches by Law Enforcement Officers

Law enforcement officers are sworn to uphold the law, are employees of a law enforcement agency, and are governed by the laws and their law enforcement agency procedures in conducting searches. In addition to probable cause, a law enforcement officer must have a search warrant from a judge unless the search falls into one of several very narrowly drawn exceptions. As law enforcement officers, school resource officers must have probable cause to conduct a search

Establishing Policy for School Resource Officer Programs

As a matter of practice, the Memorandum of Understanding (MOU) between the school district and the local law enforcement agency should define and clarify the responsibilities of the school resource officer related to school searches. In general, the MOU should clarify:

- *that any search by the school resource officer shall be based upon probable cause and, when required, a search warrant will be obtained;*
- *that the school resource officer shall not become involved in administrative searches unless specifically requested by the school to provide security, protection, or for handling of contraband; and*
- *that at no time should the SRO request that an administrative search be conducted for law enforcement purposes or have the administrator act as his or her agent.*

Searches by School Security Personnel

Schools may use personnel who are not law enforcement officers, to perform school security functions. These employees typically serve under the guidance of the principal. The security employee is usually the person designated by the principal to conduct student searches. However, the security employee may not be the individual who first identifies the need to search. Because school security employees assist school officials in conducting student searches, they should be trained in appropriate search procedures and be knowledgeable of laws and policy that govern student searches.

Canine Searches

Use of drug sniffing dogs in schools requires planning and sensitivity. In Idaho, canine sniffs of student lockers and of automobiles in school parking lots, in a sweeping fashion, are permissible. If however, the dog alerts to a specific locker, then individualized suspicion exists and related protections are required for a search to be conducted. [3.3]

Courts have decided the following involving canine searches:

U. S. Supreme Court and federal decision binding in Idaho:

- the use by law enforcement officers of a drug-detector dog to sniff the *exterior surface of a container* was not a search. U*nited States v. Place,* 462 U.S. 696, 103 S. Ct. 2637 (1983), *U.S. v. Beale,* 736 F2d 1289 (9th Cir. 1984).

Idaho District Court cases addressing this issue:

- Use of by law enforcement officers of a trained drug dog to sniff students was a search and in the facts of the case, there was no probable cause. *State of Idaho v. Juveniles, Gooding County,* Case nos. CR 96-00715, 00716, 00717, 00718, 00719 *,(*May 16, 1997).

Cases which are persuasive but are not binding in Idaho:

- teams of drug sniffing dogs sniffing closely to students, without administrators having individualized suspicion, violated students' privacy because of threatening presence of animals. *Jones v. Latexo Indep. Sch. Dist.,* 499 F. Supp 223 (E.D. Tex. 1980); *B.C. v. Plumas County Unified School Dist,192 F3d 1260, 138 Ed L.R. 1003 (9th Cir.1999).*

- the use of drug-detection dogs was permissible to conduct a school wide locker inspection where the dogs were a screening device to determine which of the school's lockers would be opened based upon the individualized reasonable suspicion created by the trained dog's reaction. *Commonwealth v. Cass,* 709 A.2d 350, 352-3, 362 (Pa. 1998).

- the use of drug-trained dogs to closely sniff students violated Fourth Amendment, but use of dogs to sniff automobiles and lockers did not. *Horton v. Goose Creek Indep. Sch. Dist.,* 690 F.2d 470 (5th Cir. 1982), *cert. denied,* 463 U.S. 1207 (1983).

- upheld use of dogs in the exploratory sniffing of lockers, the school having given notice at the beginning of the year that the lockers were joint student/school property and would be opened periodically by school officials. *Zamora v. Pomeroy,* 639 F.2d 662 (10th Cir. 1981).

E. CONDUCTING THE REASONABLE SUSPICION SEARCH

Search of Student's Possessions

School officials are generally expected to use the **least intrusive** means available to accomplish the legitimate objectives of the search. The search should be no broader in scope, nor more intrusive, than is reasonably necessary to locate the specific object(s) being sought. A school official conducting a search based on reasonable suspicion should therefore follow a logical plan designed to minimize the intrusiveness of the search and complete the search as quickly and easily as possible.

Sample Search Plan:

(1) tell the student what you are looking for and give him/her a chance to surrender the item;

(2) conduct any search away from other students;

(3) have another school official present as a witness;

(4) start any search in the place where the sought-after item is most likely to be;

(5) look to see if you can visually identify the item(s) you are looking for before touching or rummaging through personal belongings;

(6) feel the outside of a soft-bodied container to determine whether the sought-after object is inside before opening the container and exposing all of its contents; and

(7) stop searching when the sought-after item is found unless at that moment there is reasonable suspicion to believe that additional evidence of the suspected violation would be found if the search were to continue.

Be prepared to document all aspects of the search. A Student Search Checklist is provided in Chapter II.

Search of Student's Person

School officials should be especially cautious before undertaking a search of a student's person. The scope of the search must not be excessively intrusive in light of the age and gender of the student and the nature of the suspected violation. Students therefore should not ordinarily be subjected to physical touching to find evidence of comparatively minor violations of school rules. Rather, a physical search of a person is more likely to be sustained where the object of the search poses a direct threat to students, such as weapons and illicit drugs. [2.4.6] School officials must be especially cautious in touching a student's crotch area

or female breasts. As with any search, a school official should follow a logical plan that minimizes the degree of intrusion to the greatest extent possible and that reduces the likelihood that a student would resort to violence.

Sample Search Plan:

(1) bring the student to a **private place** such as the principal's office or other location away from other students;

(2) make certain that at least one other school official is present to assist and serve as a **witness**;

(3) clearly identify the specific object(s) being sought and provide the student an opportunity to surrender it unless to do so would create an unreasonable risk;

(4) separate the student from any bag, backpack, purse, etc., that he/she is carrying and require the student to remove any outer garment, such as a coat or sweater so that it can be searched without touching the student;

(5) make certain that any physical touching of the student is done by a staff member of the same sex as the student and is as limited as possible to achieve the search purpose;

(6) if the search is for a weapon and a hand-held metal detector is readily available, the wand should be used to identify pockets or areas to be searched as well as pockets that should not be touched;

(7) begin any touching of the student in the place where the object(s) is most likely to be;

(8) conduct a limited "pat down" of the student's clothing before reaching into a pocket or waistband;

(9) require the student to empty his/her pockets when a pat down reveals something that could be the sought-after evidence unless it would be dangerous to do so (i.e., where the item is a weapon that the student might reasonably use to commit an assault); and

(10) stop searching immediately upon finding and securing the sought-after item unless there is reasonable suspicion to believe that the student is carrying additional evidence of the violation that would justify a further search of the person. [2.4.6]

Be prepared to document all aspects of the search. A Student Search Checklist is provided in Section II.

Chain of Custody

Effective procedures to preserve the "chain of custody" of illegal or contraband materials discovered in the search are essential. *Illegal items* are those classified as illegal in statute and would include items such as drugs and weapons. *Contraband* include items the presence or possession of which is prohibited by school policy such as cell phones, CD players, hats, and beepers. .

Illegal **items should be seized and turned immediately over to the local law enforcement agency which maintains custody and control of these items throughout legal and disciplinary proceedings and assumes responsibility for ultimate disposition of the items. If there is any delay in the law enforcement agency taking custody of the items, school officials seizing such items should immediately place the item(s) in a sealed container such as a plastic self-locking bag, tag the item(s) for identification and keep them in a secure place such as a locking box, storage cabinet or file drawer.**

Contraband items should be maintained by the principal or principal's designee until they are no longer needed as evidence in a disciplinary proceeding. Such items should be placed in a sealed container such as a plastic self-locking bag, and tagged for identification and kept in a secure place.

F. LEGAL JUSTIFICATION REQUIRED FOR STUDENT SEARCHES

Investigative Activity	*Level of Intrusion into Student's Privacy*	*Legal Justification Required for Search*
1. Search of abandoned property in plain view	No intrusion	None
2. Search of property in plain view that student has denied owning	No intrusion	None
3. "Canine sniff" by trained drug-sniffing dog	Blanket: minimal intrusion	Blanket searches require none; Note: Individualized search by school official based on "hit," requires reasonable suspicion.
4. Administrative searches using metal detectors	Minimal intrusion	None

5. Random drug test as prerequisite for extra-curricular activities	Minimal intrusion	None* *Note that a factual justification is necessary prior to establishing a policy of testing athletes or others engaged in extra-curricular activities (i.e., demonstrated drug problem and documented efforts to reduce the problem through less intrusive means).
6. Search of student's property (backpack, car)	Significant intrusion	Reasonable suspicion—The search must be justified at the inception, reasonably related to objectives of discovering evidence of the violation, and not excessively intrusive.
7. Pat-down search of student for weapons	Significant intrusion	Reasonable suspicion—The search must be justified at the inception, reasonably related to objectives of discovering evidence of the violation, and not excessively intrusive.
8. Full frisk of student	Significant intrusion	Reasonable suspicion—The search must be justified at the inception, reasonably related to objectives of discovering evidence of the violation, and not excessively intrusive.
9. Strip search of student	***Extreme Intrusion***	***Justified only in the most extreme circumstances. It is recommended that school officials not engage in strip searches of students.***

SECTION II

SAMPLE POLICIES, PROCEDURES, FORMS, AND CHECKLISTS

II. SAMPLE POLICIES, PROCEDURES, FORMS, AND CHECKLISTS

SAMPLE POLICIES AND PROCEDURES

Sample Policies and Procedures provided here are samples only. *Districts should consult their attorney prior to adopting any policy addressing these issues.*

SAMPLE POLICY #1: SEARCHES BY SCHOOL OFFICIALS

The constitutional rights of students do not stop at the schoolhouse gates. As a result, students have a right to be protected from ***unreasonable*** searches by school officials. However, it is the intent of the board of trustees to provide a safe and orderly environment for all students, conducive to the pursuit of educational goals. As a result, it may be necessary for school officials to search a student, his/her personal belongings, locker, desk, or vehicle, when it is in the interest of the overall welfare of other students or is necessary to preserve the good order and discipline of the school.

Only district personnel authorized by the superintendent may conduct a search pursuant to this policy. This policy applies to only those searches conducted by school officials; it does not apply to searches by law enforcement officers.

DEFINITIONS

"Contraband" means all substances or materials which students are prohibited from possessing by district policy. Examples include, but are not limited to, cell phones, beepers, and articles containing gang symbols.

"Reasonable suspicion" means that the school official initiating the search has a well-founded suspicion—based on objective facts that can be articulated—of either criminal activity or a violation of district policy by a particular student(s). Reasonable suspicion is more than a mere hunch or supposition.

REASONABLE SUSPICION SEARCHES

To initiate a reasonable suspicion search, the school official must have a reasonable suspicion as to all of the following:

1. A crime or violation of school policy has been or is being committed;
2. A particular student has committed a crime or violated school policy;
3. Physical evidence of the suspected crime of violation of school policy is likely to exist; and
4. Physical evidence would likely be found in a particular place associated with the student suspected of committing the crime or school policy violation.

Sample Policy #1
Page 2

The search based on reasonable suspicion must be reasonable in its scope. The areas or items to be searched and the methods utilized must be reasonably related to finding physical evidence of the crime or violation of district policy. The search must not be excessively intrusive, given the age and gender of the student and the circumstance of the search.

School officials will make a reasonable effort to obtain the consent of a student before initiating a reasonable suspicion search, unless the circumstances constitute an emergency.

STUDENT'S PERSON OR POSSESSIONS

At any time when the student is on school property or at a school sponsored event, school officials may search a student's person or possessions (backpack, purse, etc.) if the school official has reasonable suspicion to believe that the student is in possession of illegal or contraband materials or is otherwise secreting evidence of a crime or violation of district policy.

Such searches shall be conducted in an appropriate manner, in private and witnessed by another adult. Students may be required to remove outer clothing (jacket, shoes, etc.) and empty pockets as part of the search. If the search is of the student's person ("pat-down" search), the school official conducting the search and the witness must be of the same sex as the student. Under no circumstances is a school official authorized to conduct a "strip search" of a student.

LOCKERS

Lockers assigned to students are the property of the school district and remain under the control of the district at all times. The student will be responsible for the proper care and use of the locker assigned for his or her use. Students are prohibited from using a locker for the storage of illegal, contraband, or potentially harmful items, including, but not limited to, weapons, drugs, and alcohol.

School officials may randomly open and inspect lockers for any reason at any time. If the random search produces evidence of criminal activity or violation of district policy, it may serve as a basis for a reasonable suspicion search of the locker.

School officials may open and inspect lockers when there is reasonable suspicion that the lockers may contain illegal or contraband materials, other evidence of a crime or violation of district policy, or items which may be a threat to safety or security. Searches of lockers, whether random or reasonable suspicion, may be conducted without notice, without consent, and without a search warrant.

AUTOMOBILES

Students are permitted to park on school premises as a matter of privilege, not of right. School officials are authorized to conduct routine patrols of school parking lots, inspecting the exteriors of vehicles parked on school property. The interiors of vehicles on school property may be searched whenever an authorized school official has reasonable suspicion to believe that illegal or contraband materials, other evidence of a crime or violation of district policy, or items which may be a threat to safety or security, are contained inside. Such patrols and searches may be conducted without notice, without consent, and without a search warrant.

USE OF DRUG DOGS

The district may elect to use specially trained drug dogs to alert the dog's handler to the presence of controlled substances, at the discretion of the superintendent or designee. The use of a drug dog shall comply with district policy and applicable law.

The drug dogs will be present for the purpose of detecting controlled substances in lockers, personal items or vehicles on district property only when there are no students or employees present. Only the trained dog's handler will determine what constitutes an alert by the dog.

A drug dog's alert constitutes reasonable suspicion for the district officials to search the lockers, personal items or vehicles. Such a search by district officials may be conducted without notice or consent, and without a search warrant.

SEIZURE OF CONTRABAND OR ILLEGAL MATERIALS

School officials may seize and retain, or turn over to law enforcement officials, any contraband or illegal items, or evidence of a crime or violation of district policy, found as a result of any search conducted pursuant to this policy.

NOTICE

Students and parents/guardians shall be informed of this policy at the beginning of each school year through publication of the policy or an age-appropriate summary in the student handbook.

♦ ♦ ♦ ♦ ♦ ♦ ♦

LEGAL REFERENCE:
Idaho Code Section 18-3302D *New Jersey v. TLO*, 469 U.S. 325 (1985)
Tinker v. Des Moines, 393 U.S. 503 (1969)

SAMPLE POLICY #2: SEARCH AND SEIZURE POLICY

To maintain order and discipline in the schools and to protect the safety and welfare of students and personnel, school authorities may search a student, student lockers or student automobiles under the circumstances outlined below and may seize illegal or contraband materials discovered in the search.

Searches of individual students or their personal possessions based on a reasonable suspicion must have an articulated basis at the inception and be reasonable in scope.

I. Searches, in general

A. Reasonable Suspicion: A search of a student will be justified when there are reasonable grounds for suspicion that the search will turn up evidence that the student has violated or is violating the law or district policy
Reasonable suspicion may be formed by considering factors such as the following:
(1) Eyewitness observations of school personnel;
(2) Information received from reliable sources;
(3) Suspicious behavior by the student.

B. Reasonable Scope: A search will be permissible in its scope or intrusiveness when the measures adopted are reasonably related to the objectives of the search. Reasonableness of scope or intrusiveness may be determined based on factors such as the following:
(1) Age of the student;
(2) Gender of the student;
(3) Nature of the violation and
(4) Circumstances required the search without delay.

SCHOOL PROPERTY

Student lockers, desks and other such property are owned by the school. The school exercises exclusive control over school property, and students should not expect privacy regarding items placed in school property. School property is subject to search at any time by school officials. Students are responsible for whatever is contained in desks and lockers issued to them by the school. Desks that are shared in use from class period to class period and the items contained within may be the responsibility of any of the students using the desk.

AUTOMOBILES

Automobiles on school property are subject to search by a school official if a school official has reasonable suspicion to believe that illegal materials or contraband is in or on the automobile.

THE PERSON

A student's person and/or personal property (e.g., purse, backpack, etc.) may be searched whenever a school authority has reasonable suspicion to believe that the student is in possession of illegal or contraband materials. If a pat down search of a student's person is conducted, it will be conducted in private by a school official of the same sex and with an adult witness present.

NOTICE

Students will be provided notice of the policy concerning search and seizure by having them placed in the student handbook or distributed by supplemental publication. A copy of the Policy will also be posted in the principal's office or another prominent place in each secondary school. If a metal detector is to be used, the additional notices required for its use will be given.

SEIZURE OF ILLEGAL OR CONTRABAND MATERIALS

If a properly conducted search yields illegal or contraband materials, such findings shall be turned over to the proper legal authorities for ultimate disposition.

♦ ♦ ♦ ♦ ♦ ♦ ♦

LEGAL REFERENCE:
Idaho Code Section 18-3302D
New Jersey v. TLO, 469 U.S. 325 (1985)
Tinker v. Des Moines, 393 U.S. 503 (1969)

SAMPLE SEARCH CHECKLISTS

The Sample School Search Checklists are designed to help districts comply with the requirements of the Fourth Amendment of the U. S. Constitution and Article 1, § 17 of the Idaho Constitution by setting out a series of questions that school officials should be prepared to answer before conducting a reasonable suspicion-based search. In addition, the checklists concisely restate some of the most important legal principles relating to student searches. School officials using the checklists are encouraged to consult the applicable provisions of in Chapter III of the guide for more detailed information about these important legal principles. Checklists included here are samples only. ***You should consult your school board attorney prior to and while using these materials.***

How to Use These Checklists

The following school search checklists were developed to help school officials understand and comply with the Fourth Amendment of the United States Constitution and Article 1, § 17 of the Idaho Constitution, which impose limitations on the authority of public school teachers, principals and other administrators, coaches, and other public school staff members to conduct searches. The references in brackets are to sections in the "School Searches: Legal Principles" section of this resource guide. The checklists refer to some but not all of the rules and principles that are described in greater detail in the main text.

The Fourth Amendment of the United States Constitution and Article 1, §17 of the Idaho Constitution prohibit searches that are unreasonable, balancing the legitimate privacy rights of students against the legitimate need for school officials to maintain order, discipline, and safety. The key to meeting the reasonableness test is to document all of the reasons that justify the decision to undertake the search. ***When school officials think carefully about what they wish to accomplish, and try consciously to minimize the intrusion upon students' privacy rights, they are far less likely to violate the Fourth Amendment.*** For school officials, as for police officers, most Fourth Amendment violations are thoughtless ones. It is hoped that these checklists will help school officials to organize their thoughts.

These checklists concisely restate some of the most important search and seizure rules, and are designed to help school officials identify and record appropriate facts that would justify a search of a student and his/her locker and possessions when there are reasonable grounds to suspect that a student has committed an offense or violation of school rules and that evidence of a violation would be revealed by the search. This is done by presenting a series of questions that a school official should be prepared to answer to justify a search or seizure. Note that not all of these questions will be pertinent in any given situation.

Some questions will require more than a simple "yes" or "no" response, and when a more detailed answer is appropriate, the checklist will usually indicate in parentheses that the school official should be prepared to more fully "explain" or "describe" the relevant circumstances and/or why the school official drew the inference or reached the conclusion that he or she did.

These checklists do not by any means list all of the pertinent facts and observations that could conceivably occur during an investigation into suspected criminal activity or violation of school rules. It is not possible to anticipate every situation that could arise, and school officials should be prepared to record any additional pieces of information that might be relevant in determining the reasonableness of a search.

School officials should carefully document all of the facts that were known before conducting a search, as well as any information learned during the course of conducting a search. The timing and sequence of events is critical. ***School officials must be prepared to explain what they knew, and when they knew it***. ***An investigation must be thought of as a step-by-step process where each step in the unfolding sequence of events is justified by the information learned in the preceding steps.*** Thus, for example, a school official must have "reasonable suspicion" to believe an offense or violation of a law or school policy was committed before searching a locker or backpack to search for evidence of the violation. School officials should carefully document not only all relevant facts and observations, but also the reasonable, common sense inferences that can be drawn from the information at hand, based upon the school official's training and experience.

CHECKLISTS INCLUDED HERE ARE SAMPLES ONLY. THEY ARE NOT INTENDED FOR USE WITHOUT CONSULTING A LOCAL SCHOOL BOARD ATTORNEY

SAMPLE ONLY

BEFORE SEARCHING

What kind of search is being considered?

____ 1. Blanket or random search where there is no expectation of privacy, i.e., lockers, desks, and parking lot. If yes,
___ Have all required notices been provided?
___ Are procedures in place to ensure the search treats all students and their property in the same manner?
___ Are procedures in place to handle a search if/when individualized reasonable suspicion is established?
___ Are those conducting the search fully trained?
___ Is there an adult employee as an observer?

____ 2. Reasonable suspicion search. If yes,
___ Is there reasonable suspicion?
___ What is the basis of that reasonable suspicion?
Go to Sample Checklists 1 and 2.

____ 3. Consent search. If yes,
___ Has consent been given?
___ Is there documentation that consent was *willingly and knowingly* given?
Go to Sample Checklist 6

____ 4. Search by law enforcement officers based on probable cause. If yes,
___ Do school personnel know what is expected of them?

SAMPLE ONLY

CHECKLIST 1: AUTHORITY TO INITIATE A REASONABLE SUSPICION SEARCH

To initiate a lawful search, a school official, based on reasons that can be articulated, believes that:

____ (1) a law, school rule, or district policy has been or is being violated;

____ (2) a particular individual student(s) has committed the violation ;

____ (3) the suspected violation is of a kind for which there may be physical evidence (i.e., contraband, instrumentality, material objects acquired by means of or in consequence of the violation , or other evidence of the violation); and,

____ (4) the sought-after evidence could reasonably be found in a particular place associated with the student(s)suspected of committing the violation.

NOTE: ALL THE ABOVE CONDITIONS MUST BE MET TO PROCEED WITH A SEARCH

SAMPLE ONLY

CHECKLIST 2: REASONABLE SUSPICION JUSTIFYING A SEARCH

Reasonable suspicion: Evidence that, based on the circumstances presented, would lead an ordinarily prudent and cautious person to believe criminal activity or violation of district policy is or has occurred. Reasonable suspicion must be based on specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant intrusion on the student's expectation of privacy.

FACTS THAT SUPPORT REASONABLE SUSPICION.

The following factors and circumstances may be used in determining whether reasonable suspicion exists to initiate a search.

Circumstances Establishing Reasonable Suspicion for a Search.

_____ School official observed violation of law, district policy, or school rule, in progress.

_____ School official observed weapon, contraband, item believed to be stolen, or other evidence of a violation of law or district policy, in student's possession or control. (Explain.) [2.3.7]

_____ Student smells of burning tobacco or marijuana. [2.3.6]

_____ Student appears to be under influence of alcohol/drugs. (Explain.)

_____ Student admits violation of law, district policy, or school rule.

_____ Student fits description of suspect of recently reported violation of law, district policy or school rule.

_____ Student uses threatening words or engages in threatening behavior. (Explain.)

_____ Incriminating evidence was found in student's possession or control during a lawful consent search.

_____ Incriminating evidence was turned over by another student.

_____ Trained drug dog "hits" on student's locker.

Checklist 2: Reasonable Suspicion Justifying A Search
Page 2

Other Relevant Factors
(These factors are relevant but are not enough, by themselves, to justify a search.)

_____ Training and experience of school official conducting the search and familiarity with the particular disciplinary problem.
_____ Student to be searched has history of previous similar violations.
_____ Student was previously disciplined for a similar violation.
_____ Student was already subject of pending investigation for similar violation.
_____ Report of stolen item.
_____ Student was seen leaving area where violations are often committed (i.e., location where students congregate to smoke).
_____ Student became nervous or excited when approached by school official. (Explain.) [2.3.4]
_____ Student refused to make eye contact with school official. [2.3.4]
_____ Student made a suspicious or "furtive" movement. (Must describe the exact conduct and why it was suspicious.) [2.3.4]
_____ Student attempted to conceal an object from school official's view.
_____ Student denied making the suspicious movement observed by the school official. (Note: Lying is always relevant in deciding whether there are reasonable grounds to believe that the student committed a violation, but is not sufficient in itself to create reasonable suspicion for a search.)
_____ Student is part of a group known to have committed similar violations. (Explain.) [2.3.11]

Beware of using any past behavior or the reputation of a student as a basis for reasonable suspicion. It can be a factor to consider, but past bad acts are not evidence of current violations.

Searches of Multiple Suspects
Did the search involve more than one student? If so, was there a reasonable articulable suspicion to believe that each individual to be searched would be in possession of the item(s) being sought? (Note: In some situations, the number of suspects may be so small that the entire group may be searched. Courts will consider (1) the size of the group, (2) the basis for believing that one or more of the students committed the violation and or has possession or control of any evidence of the violation, (3) the seriousness of the violation, and (4) whether the sought-after evidence could harm others.) [2.3.9]

What investigative steps were taken before searching a group of students to narrow the field of suspects? (Explain.)

Describe the reasonable suspicion to believe that each individual to be searched was in possession of the item(s) being sought.

SAMPLE ONLY

CHECKLIST 3: INFORMATION PROVIDED BY OTHERS

Note: All source information should be carefully documented, explaining why the source is credible, worthy of being believed and known to be truthful (has veracity) and why the information is reliable(how the person gained this information). The record should indicate when, during the course of the investigation, each particular piece of information was learned, and from what source. An anonymous "tip" standing alone will usually not justify a search unless the information provided is corroborated by an independent investigation or observation, or by some other source of information.

Credibility

_____ Information provided by a school staff member
_____ Information provided by a student
_____ Similar or corroborative information provided by multiple sources
_____ Information provided by a victim of an offense

Reliability of Information

How recent or "fresh" is the information? If there was a delay in reporting the information, why? [2.3.8]

Was the informant an eyewitness to a violation? Did the source actually see the violation and offender? (Describe the circumstances and the likelihood that the person could be mistaken, e.g., poor lighting, observation from a substantial distance, obstructed view, etc.). [2.3.2] Provide as many details and factual descriptions as possible.

Does the informant have personal knowledge of the violation, or have only second hand information? (Explain.)

How did the informant learn of or know about the violation and the existence and location of the evidence (e.g., he/she was present when the violation was committed; he/she saw (or smelled) the evidence and saw where it was being kept, etc.)?

Did the informant hear the suspect admit to or boast about the violation? (Explain the circumstances of the overheard admission and the likelihood that the suspect was lying or exaggerating to impress others.)

Veracity of the Informant

Does the informant have a reputation for truthfulness? Did the informant have a motive to lie or exaggerate?

Checklist 3: Information Provided By Others
Page 2

Is the informant known to be involved in unlawful activity? If so, explain why this source of information is credible. [2.3.3a]

Has this informant provided reliable information in the past?

Did the informant make a statement against his or her own interests?

Does the informant have a motive to lie or to minimize his/her own culpability by falsely accusing another?

Did the informant provide information in exchange for leniency?

Anonymous Tips

Was the information provided anonymously? If so, describe the steps taken to verify/corroborate the information before conducting the search. [2.3.3c]

Were similar anonymous "tips" obtained from two (2) or more separate sources?

Was the anonymous tip consistent with information you were already aware of? (Explain.)

Additional Information Learned Before Conducting the Search.

Did you find and question other persons who may have witnessed the violation or who may have relevant information. If yes, with what results? If not, why not?

Did the student suspected of the violation make an admission to other students?

Did you observe conduct or circumstances that would tend to corroborate the suspicion (e.g., student appeared to have been in recent fight, student appeared to be under influence of drugs,) (Explain.)

Additional Information Learned by Interviewing the Suspect Student.

Did you confront the student about the violation before conducting the search? If so, describe the student's reaction (e.g., admitted offense, denied offense, became nervous, excited, belligerent, was evasive, etc.).

Factually and objectively describe the student's attitude to your questions (e.g., evasive, hostile, uncooperative, etc.). [2.3.4] (***Note: A student's refusal to consent to a search may not be used as evidence that the student is guilty or has something to hide.) [2.4.13]***

Did the student provide an improbable explanation for his/her conduct? (If so, explain why it was improbable.)

Checklist 3: Information Provided By Others
Page 3

Did the student make any statement that you knew to be false or misleading? (If so, explain.)

Were there any discrepancies/inconsistencies in the student's story? (If so, explain.)

Was the suspected violation committed by more than one (1) student? If so, did you question each one separately?

Did two (2) or more suspect students give conflicting stories/explanations?

Did the student(s) make any furtive or unusual movements? (Describe the actions and why they were suspicious.)

Did you ask the student to explain these furtive or unusual movements?

Did the student deny making the movements that you observed?

Did you smell tobacco/alcohol/drugs on the student's person?

Did the suspect appear under the influence of alcohol or drugs? If so, factually describe the relevant aspects of the student's appearance that made you think so.

Did the student have difficulty in responding or standing?

Did another school staff member question the student about the incident? If so, did the student give answers different from the ones given to you? (Explain.)

SAMPLE ONLY

CHECKLIST 4: SEARCHES OF A STUDENT'S POSSESSIONS

School officials are expected to use the **least intrusive** means available to accomplish the legitimate objectives of the search. The search should be no broader in scope or intrusion, than is reasonably necessary to locate the specific object(s) being sought. A school official conducting a search should therefore follow a logical plan designed to minimize the intrusiveness of the search and complete the search as quickly and easily as possible.

General Provisions:

_____ Student was told what you are looking for and he/she was given a chance to surrender the item;
_____ Search was conducted away from other students;
_____ Another school official was present as a witness;
_____ Search was started in the place where the sought-after item was most likely to be;
_____ Visual identification of the item(s) sought was attempted before personal belongings were touched; outside of soft-bodied containers were felt before containers were opened exposing all of its contents;
_____ Search was stopped when the sought-after item was found unless at that moment there is reasonable suspicion to believe that additional evidence of the suspected violation would be found if the search were to continue.

Specific Documentation:

Describe the object(s) you expected to find before the search was initiated:

Was there a logical and reasonable connection between the thing or place to be searched and the item expected to be found there (i.e., why did you think that the evidence of the suspected offense/violation would be found at this location)? (Explain.) [2.4.3]

Was there reasonable suspicion to believe that the sought-after evidence would still be at this location? [2.3.8]

When was the last time the evidence was seen or reported to be at this location?

Was the suspected violation of an ongoing nature (i.e., drug possession or distribution), or was it a "one-time" incident?

Did anyone report actually seeing the sought-after evidence at the location to be searched?

Checklist 4: Searches Of A Student's Possessions
Page 2

Was the container/place to be searched physically capable of concealing the evidence you were looking for?

Was the container/place to be searched of a kind commonly used to store or conceal the type of evidence that you were looking for? (Explain.) [2.4.3]

Have previous searches of such containers/places resulted in the discovery of this kind of evidence?

Have you received drug recognition or other training from police concerning the nature of local drug or gang-related activities and the manner in which drugs or weapons are concealed or packaged?

Did you feel or examine the container to determine whether the sought-after object was inside before opening the container and exposing all of its contents to view?

Was the actual search (i.e., the opening of the locker, backpack, etc.) conducted out of the presence of other students? If not, why not? [2.4.4]

Was the search conducted in the presence of the student suspected of committing the violation? If so, was the student given an opportunity to assist in the search (i.e., to open the backpack and to produce only the sought-after item)?

Was there reason to believe that the student would resist or interfere in the search, try to conceal or destroy evidence, or reach for and use a concealed weapon? (Explain basis for concern.)

Was at least one (1) other school official present to serve as a witness? (Identify the witness.)

Did the search involve a vehicle? If yes, was the vehicle on school property? Were students advised that vehicles brought onto school parking lots are subject to being searched? [2.8]

How long did the search take to complete?

Checklist 4: Searches Of A Student's Possessions
Page 3

Did the search cause any damage to student property? If so, describe the damage and why this was necessary? [2.4.8]

Did you threaten to use force against a student? (***Must fully explain.***) [2.4.9]

Did you use actual force against a student (i.e., physical restraint)? (***Must fully explain.)*** [2.4.9]

Did the student physically resist or attempt to interfere with the search or threaten anyone with violence? If so, were the police called?

Did the search cease when the particular item(s) being sought was found and taken into custody? [2.4.11] If not, explain the reasonable grounds to believe that additional evidence of the suspected violation would be found.

Did you find evidence of a school policy or law violation that you did not initially expect to find? [2.4.12]

If yes, when you discovered this other item(s), were you looking in a place and in a manner likely to find the item that you were originally looking for? If not, you must explain why you expanded the scope of your initial search.

When you discovered this other item(s), was it immediately apparent to you that this object was contraband or evidence of a violation? (Explain.)

SAMPLE ONLY

CHECKLIST 5: SEARCHES OF A STUDENT'S PERSON

School officials should be especially cautious before undertaking a search of a student's person. The scope of the search must not be excessively intrusive in light of the age of the student and the nature of the suspected violation. Students therefore should ***not*** be subjected to a physical touching to find evidence of minor violations of district policy. Rather, a physical search of a person is more likely to be upheld where the object of the search poses a direct threat to students, such as weapons and illicit drugs. [2.4.6]

As with any search, a school official should follow a logical plan that minimizes the degree of intrusion to the greatest extent possible and that reduces the likelihood that a student would resort to violence during the search.

General Provisions:

_____ Student was brought to the principal's office or other location away from other students;
_____ One (1) or more other school official were present to assist and serve as witness(es);
_____ The specific object(s) being sought were clearly identified and the student was provided an opportunity to surrender it. If this created an unreasonable risk, describe that risk:
_____ Any handbag or other container that he/ she is carrying was separated from the student and student was required to remove any outer garment so that the possession or garment could be searched without touching the student;
_____ Any physical touching of the student was done by a staff member of the same sex as the student;
_____ If the search was for a weapon and a hand-held metal detector was used, the wand was used to identify pockets or areas to be searched as well as pockets that should not be touched;
_____ Touching of the student began in the place where the object(s) is most likely to be;
_____ A limited "pat down" of the student's clothing was conducted before reaching into a pocket or waistband;
_____ Student was required to empty his/her pockets when the pat down revealed something that could be the sought-after evidence. If this was deemed to be dangerous (i.e., where the item is a weapon that the student might reasonably use to commit an assault), explain basis for that determination:
_____ Search was immediately stopped upon finding and securing the sought-after item unless there was a reasonable suspicion to believe that the student was carrying additional evidence of the suspected offense or violation that would justify a further search of the person. [2.4.6] Explain justification for a further search of the person:

Checklist 5: Searches Of A Student's Person
Page 2

Specific Documentation

What is the age and gender of the student to be searched?

Was the student brought to the principal's office or other location away from other students? If not, why not?

Was another school employee present as a witness? (Recall that searches should be conducted in private and away from other students. It is nonetheless recommended that another school staff member attend to serve as a witness.)

Did the student at any time physically resist or threaten to physically resist the search? If yes, were the police called? If not, why not? (While school officials may be authorized in some circumstances to use force in conducting a search, ***the better practice is to call the police for assistance.***) (Explain.)

Did you tell the student exactly what you were looking for?

Was the student given an opportunity to remove the sought-after item from his/her pocket before being physically touched? If not, why not? (i.e., the sought-after item was a weapon that the student could have used to commit an assault)

Did you separate the student from any handbag or container he/she was carrying?

Did you ask the student to take off any coat or jacket so that it could be searched without touching the student?

Was any touching of the student done by a staff member of the same sex as the student? If not, why not?

Was any touching of the student first done at the location most likely to be concealing the sought-after evidence?

Checklist 5: Searches Of A Student's Person
Page 3

Was the student "frisked" (i.e., a limited pat down of the outer clothing) to feel for the sought-after object before reaching into a pocket or waistband?

Did the frisk reveal an object that could have been the item being sought?

Did the frisk reveal an object immediately believed to be a weapon or other contraband?

Did you ask the student to empty a pocket to reveal any object felt during a pat down that could reasonably have been the sought-after item? If not, why not?

Did the object appear to be a weapon that could have been used to assault you?

Did the student comply with this request?

Did the search at any time expose the student's undergarments or naked body? (Must fully explain.)

Note*: Idaho has not enacted a statute addressing the strip search of students by school officials.* The best and recommended practice is that school officials never attempt to "strip search" a student. Rather, if the situation is so severe that a strip search is contemplated, the school official should contact law enforcement immediately and ask for their assistance. A strip search would include the removal or re-arrangement of clothing for the purpose of visual inspection of the person's undergarments, or any area of the body concealed by the student's clothing. The recommendation of no strip searches would not preclude a school official from ordering a student to produce an object concealed on his or her person, even if the object is located in the crotch area or in a brassiere, provided that there is no touching by a school official of the student nor significant exposure to view the student's undergarments or nude body. (Note that ordering a student to produce the sought-after evidence does constitute a search, although not necessarily a "strip search.")

SAMPLE ONLY

CHECKLIST 6: CONSENT TO SEARCH

A school official may ask for permission to conduct a search at any time, with or without reasonable suspicion. Note that if you do have reasonable grounds to believe that evidence of a violation will be found in a particular place, you need not rely on the consent doctrine and may conduct a search of that location even over a student's objection.

To be valid, permission to search must be clear and unequivocal and must constitute a knowing and voluntary waiver of constitutional rights. The best practice is to obtain express consent in writing. A student's mere acquiescence to your request to search would not constitute a valid consent if the student reasonably believed that you would conduct the search whether he/she agreed to the search or not. ***A student's refusal to give permission may not be considered as evidence of guilt.***

Specific Documentation:

Where did the waiver of rights take place (e.g., principal's office, crowded hallway, etc.)?

Was a Permission to Search form used? [2.6.1a] See sample form on page XX.

Did the student read and sign the form?

Did the student giving consent appear to have the authority to consent to a search of the area or object at issue? [2.6.3]

Did the student giving consent claim or appear to own the property to be searched?

Did the student giving consent appear to control the property to be searched? (Explain.)

Was the place to be searched a locker assigned to that student? (Note: Special care should be taken in obtaining consent to search an area under joint control, such as a locker assigned to two students or a desk that may be used by numerous students during the day. In that event, the search must be limited to the belongings of the person giving consent.)

Checklist 6: Consent to Search
Page 2

Did the student deny ownership of the object to be searched? [2.6.3] (If so, the student has no expectation of privacy and that particular student cannot later complain that you went ahead and searched that object. However, the student would also have no authority to grant permission to search that object/place.)

Was the person giving consent mature enough to be able to understand his/her rights? (Explain.) [2.6.2]

Objectively describe the person's state of mind and appearance (e.g., calm, trembling, protesting his/her innocence, anxious, etc.).

Was the student familiar to you (i.e., did you have any prior interaction with the student that would put him/her at ease)?

Was he/she accustomed to being brought to the principal's office?

Had the student ever before been asked to give consent to search? (Describe the prior incident.)

Were any threats or promises made by you or anyone else to obtain consent? [2.6.2]

If the student giving consent is under the age of eighteen, was a parent or guardian given the opportunity to participate in the waiver process? If not, why not?

Did you tell the student/parent why you were asking for permission to search and describe what you were looking for?

Was the student/parent advised that he/she may refuse to give consent and that there would be no recriminations for doing so?

Did the student reasonably believe that you would proceed to conduct the search whether he/she consented or not? (Explain.)

Checklist 6: Consent to Search
Page 3

Was the student advised that he/she could limit the scope of the consent search to particular places or things to be searched, and could withhold consent as to particular places and things? [2.6.5] ***(Note: You may not use a student's refusal to consent to search a particular object or location as evidence or an inference that the student is hiding something at that location.)***

Was the student advised that he/she may terminate consent at any time without having to give a reason for doing so? [2.6.4]

Was the student present during the execution of the search?

Was the student aware that he/she could watch the search being conducted? (e.g., did you advise the student that he/she could be present during the search?)

Was the execution of the consent search limited to the scope of the consent that was given (e.g., limited to places/objects specifically discussed as part of an oral waiver or described in the signed form)? [2.6.5]

Did any signed consent form authorize the search of the student's entire locker, including any backpacks or other closed containers stored therein)

Did the student at any time revoke or withdraw permission to search? If yes, did you immediately stop searching? [2.6.4] (***Note: You may not use a withdrawal of consent as evidence that you were getting close to uncovering an incriminating object.)***

If you continued to search after consent was withdrawn or revoked, did you at that point have reasonable grounds to believe that a further search would reveal evidence of an offense/violation? (See Authority to Initiate the Search checklist.)

SAMPLE FORMS

SAMPLE FORM:

STUDENT ACKNOWLEDGEMENT CONCERNING USE OF STUDENT PARKING LOTS

I acknowledge and understand that:

1. Students are permitted to park on school premises as a matter of privilege, not of right;

2. The School District retains authority to conduct routine patrols of student parking lots and inspections of the exteriors of student vehicles on school property. Such patrols and inspections may be conducted without notice, without student consent, and without a search warrant;

3. The School District may inspect the interiors of student vehicles whenever a school official has reasonable suspicion to believe illegal or contraband materials are contained inside the automobiles. Inspections of the vehicle's interior, based on reasonable suspicion, may be conducted without notice, without student consent, and without a search warrant;

4. Inspection of the interior of any vehicle requires reasonable suspicion on the part of the school official conducting the inspection.

_____
Student Signature

_____
Date

SAMPLE FORM:

STUDENT ACKNOWLEDGEMENT CONCERNING STUDENT USE OF LOCKERS

I acknowledge and understand that:

1. Student lockers are the property of the School District;

2. Student lockers remain at all times under the control of the School District;

3. I am expected to assume full responsibility for the contents of my school locker; and

4. The School District retains the right to inspect student lockers for any reason at any time without notice, without student consent, and without a search warrant.

_____
Student Signature

_____
Date

_____
Locker Number

SAMPLE FORM:

STUDENT CONSENT TO SEARCH

I, _____, age _____, grade _____,
(student's name—(parent of)

at _____, on the _____ of _____, _____, at
(time) (day) (month) (year)

_____, voluntarily consent to a search by
(location)

_____ of
(name of school official)

_____
(describe item or place to be searched)

I authorize the person conducting the search to seize any item that:

(1) is illegal;
(2) violates a district policy;
(3) is evidence of a crime; or
(4) is evidence of a violation of district policy.

My voluntary consent to this search is not the result of fraud, duress, fear, or intimidation.

_____ _____
School official's name School official's signature

_____
School official's title Date

_____
Student's name Student's signature/-parent of

_____
Date

SAMPLE FORM:

STUDENT SEARCH REPORT

1. Name, gender, grade, and age of student(s) searched (One student per page)

_____ _____ _____ _____
Name of student Gender Grade Age

2. Name, business address and phone number of school officials conducting and witnessing search:

Official(s) Who Conducted Search

_____ _____
Name Title/Position

_____ _____
Address Telephone Number

_____ _____
Name Title/Position

_____ _____
Address Telephone Number

Official(s) Who Witnessed Search

_____ _____
Name Title/Position

_____ _____
Address Telephone Number

_____ _____
Name Title/Position

_____ _____
Address Telephone Number

Sample Student Search Report Form
Page 2

1. Time and location of search:

_____ _____
Date Begin/End Time Location

2. Suspected crime or district policy violation that formed the basis for the search:

3. Why was this particular student suspected of committing a crime or district policy violation?

4. Was the student or his/her parent asked to consent to the search?
Check one: _____ yes _____ no
If so, did the student or parent consent? *Check one*: _____ yes _____ no

5. What was searched, and how was the search conducted?

6. Item sought in the search:

7. How was the item connected to the suspected crime or district policy violation?

8. Why was the item suspected of being located in the place searched?

9. Did the search involve more than one student? *Check one*: _____ yes _____ no
(If "yes", answer "a," "b" and "c")

a. How many students?

b. Explain the reasonable suspicion for believing that each of these students was in possession of the item(s) sought:

c. What investigative steps were taken before searching a group of students to determine which individual students reasonably had possession or control of the items sought?

Sample Student Search Report Form
Page 3

10. Was information forming the basis for the search provided by another person (an informant)?
____ yes ____ no
If "yes," check appropriate box:
Check all that apply:
_____ a school staff member _____ a parent
_____ a student _____ other (identify):

a. What did the informant see or hear concerning the student and the suspected criminal or district policy violation?

b. How did the informant learn about the student's involvement in the crime or district policy violation?

c. Does the informant have a reputation for telling the truth?

d. Did the informant have a motive to lie or exaggerate? If "yes," what was the motive?

e. Has the informant provided reliable information in the past?

f. Was the informant involved in the crime or district policy violation?
Check one: _____ yes _____ no If "yes," answer "g" through "j" below:

g. Did the informant make a statement against his or her own interest?

h. Did the informant have a motive to lie or minimize his or her involvement by falsely accusing another? If "yes," explain:

i. Did the informant provide information in exchange for leniency? If "yes," explain:

j. Explain why informant's information was credible and whether that information was corroborated before the search:

11. List any relevant items found in the search and where they were found:

SAMPLE FORM:

STUDENT SEARCH REPORT

Student: _____

I. Basis for reasonable suspicion that the search will produce evidence that the student has violated or is violating the law or district's policies?

A. Eyewitness account.

Eyewitness: _____ Date/time: _____
Place: _____
What was seen: _____

B. Information from a reliable source:

Informant: _____Date/time received:_____
How information was received: _____
Who received the information: _____
Describe information: _____

C. Suspicious Behavior. Describe.
D. Student's past history. Explain.

II. Was the search you conducted reasonable in terms of scope and intrusiveness?

A. Item being searched for:
Sex and age of student:
B. Circumstances of the situation:
C. Type of search is being conducted:
D. Person conducting the search: (Name, position, sex)
E. Witness(es): (Name, position, sex)
E. Time of search:
F. Location of search:
G. Student told purpose of search:
H. Consent requested:

III. Description of Search

A. Describe exactly what was searched:
B. What did the search yield?
C. What was seized?
D. What materials, if any, were turned over to law enforcement?
E. Date/time parents were notified of the search, its reason, and its scope:

_____
Signature of Principal Date

APPENDIX A

SCHOOL SEARCHES:

LEGAL BASE

School Boards must adopt and revise regulations governing student conduct to preserve a safe, nondisruptive environment for effective teaching and learning.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL SCHOOL SEARCH REFERENCE GUIDE

Content of this section is excerpted from the ***School Search Reference Guide*** developed in 1999 by the National Association of Attorneys General. That ***School Search Reference Guide*** is based on the "New Jersey School Search Policy Manual" developed by New Jersey Attorney General Peter Verniero. Excerpts included here focus on published court decisions interpreting the Fourth Amendment of the United States Constitution.

In all cases, school officials should consult with their appropriate legal advisors concerning state statutes, regulations, and case law. This Section provides a broad overview of search and seizure law as it applies to school officials and students and is designed to enhance the knowledge of school officials and law enforcement officers. It does not create any rights beyond those established under the United States Constitution. Although content present is designed to assist school officials in keeping weapons, drugs, and other contraband out of schools, nothing in the guide should be construed as directing any school official to conduct a search on behalf of any law enforcement agency or for the principal purpose of securing evidence to be used in an adult or juvenile criminal prosecution. Additionally, court decisions after the date of publication of this document may change some legal principles set forth herein.

1.0. INTRODUCTION

Despite several recent tragedies, schools continue to be among the safest places in America. Even so, each day, serious offenses, including violent crimes and weapon and drug-related offenses, are committed by and against schoolchildren. These offenses endanger the welfare of children and teachers, and disrupt the educational process. The situation demands a decisive response.

One of the best ways to keep weapons, drugs, tobacco, alcohol, and other forms of contraband out of our schools and away from children is to make clear that school officials will keep a watchful eye and will intervene decisively at the first sign of trouble. It is essential for school officials to be vigilant and to pursue all lawful means to keep guns and other weapons, drugs, and alcohol off of school grounds.

The need to keep order and to maintain a safe, well-disciplined school environment must be balanced against the rights that students enjoy to be free from unreasonable searches and seizures. The challenge is to achieve a delicate and appropriate balance between the need to protect the right of students and teachers to be safe and the need to respect the rights guaranteed to all citizens under the Fourth Amendment of the United States Constitution. While the Fourth Amendment imposes significant limitations on the authority of police — and school officials — to conduct searches and to seize property, the law provides enough flexibility for school officials to protect students from harm and to enforce school codes of conduct. Indeed, a

landmark United States Supreme Court decision expressly recognizes the authority of school officials to conduct reasonable searches of students and their property.

See New Jersey v. T.L.O., 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). The Court's ruling provides school officials with an important tool with which to address the security problems posed by students who use, possess, or distribute drugs, alcohol, or weapons.

1.1. Reasons to Know and Comply With the Requirements of the Fourth Amendment.

The United States Supreme Court in *New Jersey v. T.L.O.* ruled that the Fourth Amendment applies to students while on school grounds. This can lead to certain collateral consequences that public school teachers and school administrators should carefully consider before undertaking any search. Evidence of a crime revealed during an unlawful search, for example, may be subject to the "exclusionary rule," meaning that this evidence will not be admissible at trial in an adult or juvenile prosecution. A school official's unreasonable error in judgment, therefore, may unwittingly interfere with the orderly administration of the criminal and juvenile justice systems.

Furthermore, an illegal search may in certain circumstances subject school officials and their districts to a civil lawsuit for compensatory and possibly punitive damages. Because such litigation is invariably time-consuming and expensive, school officials will obviously want to know how to recognize and avoid situations where civil liability is likely to be imposed.

Finally, and most importantly, school officials must learn and respect the bounds of constitutional behavior if they are to remain faithful to their duties as teachers and role models. Our Constitution sets forth the basic tenets that limit the power of government in its dealings with private citizens. Public schools often provide young citizens with their first exposure to the practical workings of our democracy and the administration of justice. Schools thus emerge as a particularly appropriate forum in which to demonstrate to our children how our system of government is supposed to work.

1.2. Search Defined.

A "search" entails conduct by a government official (including public school employees) that involves an intrusion into a person's protected privacy interests by, for example, examining items or places that are not out in the open and exposed to public view. This is usually accomplished by "peeking," "poking," or "prying" into a place or item shielded from public view or a closed opaque container, such as a locker, desk, purse/handbag, knapsack, backpack, briefcase, folder, book, or article of clothing.

The act of opening a locker or b to inspect its contents — however brief and cursory the intrusion — constitutes a search under the Fourth Amendment. For purposes of this Manual, the tactile examination or manipulation of an object, sometimes referred to in a law enforcement context as a "frisk" or "pat down," would also be a search if conducted by school officials. (Note that such conduct by police, if undertaken to reveal a concealed weapon, technically is not considered to be a full-blown search, and thus is subject to a lesser standard of judicial review than full probable cause. Since the standard

governing a so-called "Terry " by police is essentially the same as the legal standard used to determine the reasonableness of a full- search conducted by school officials, for purposes of this Reference Guide, a frisk conducted by a school official, a form of "poking," is tantamount to a search.) The act of reading material in a book, journal, diary, letters, notes, or appointment calendar is also a search.

Note that an "inspection" is essentially the same as a search in terms of the Fourth Amendment if it involves peeking, poking, or prying into a private area or closed container. So too, ordering a student to empty his or her pockets or handbag constitutes a search. This is true even though the school official never physically touched the student or the student's property, because if the student complies with the school official's request or command, objects that are not out in the open or already in plain view will be exposed to the school official's scrutiny, thus achieving the ultimate objective of a search. See *United States v. DiGiacomo,* 579 F.2d 1211, 1215 (10th Cir. 1978) ("an examination of the contents of a person's pocket is clearly a search, whether the pocket is emptied by [a police] officer or by the person under the compulsion of the circumstances").

Merely watching students while they are in class or in school hallways does not intrude on any recognized privacy interest, and this form of surveillance does not constitute a search within the meaning of the Fourth Amendment. Similarly, the use of video cameras to monitor most places within a school building, such as hallways, does not constitute a search, provided that the monitoring equipment does not capture sound that might intercept or overhear a private conversation. (In that event, the monitoring would implicate the provisions of federal and state electronic surveillance statutes, which impose significant limitations on the ability of government officials and even private citizens to intercept private conversations.) So too, the act of looking through the transparent windows of a parked automobile — if done without opening the door or reaching into the vehicle to move or manipulate its contents — is not a search for the purposes of this Reference Guide.

1.3. Seizure Defined.

The term "seizure" is used to describe two distinct types of governmental action. A seizure occurs (1) when a government official interferes with an individual's freedom of movement (the seizure of a person), or (2) when a government official interferes with an individual's possessory interests in property (the seizure of an object).

As a general proposition, the right of freedom of movement enjoyed by school-aged children is far more limited than the right of liberty enjoyed by adult citizens. Children below a certain age, after all, are generally required by state laws to attend school, and minors are also subject to reasonable curfews imposed by local governments. Thus, school officials can certainly compel students to attend particular classes and to be present at certain events or assemblies without in any way implicating the rights embodied in the Fourth Amendment. Students, of course, are subject to the daily routine of class attendance, and the times and locations for each class period are determined by school officials, not by students. *See Doe v. Renfrow,* 475 F. Supp. 1012, 1019 (N.D. Ind. 1979)*, aff'd in part, remanded in part,* 631 F.2d 91 (7th Cir. 1980), cert. den. 451

U.S. 1022, 101 S.Ct. 3015, 59 L.Ed.2d 395 (1981) (district court flatly rejected the claim that a scent dog operation constituted a "mass detention and deprivation of freedom of movement"; school officials maintain the discretion and authority for scheduling all student activities each day).

Schools may impose significant restrictions not only on students' freedom of movement, but also on their ability to use and possess personal property. School authorities may, for example, prohibit students from bringing on to school property objects or items that are not per se illegal were they to be carried by adults, such as personal stereos, cellular telephones, pagers, pocket knives, tobacco products, or any other object that might conceivably disrupt the educational environment. The United States Supreme Court in *New Jersey v. T.L.O.* made clear that schools can enforce rules "against conduct that would be perfectly permissible if undertaken by an adult." 469 U.S. at 339, 105 S.Ct. at 741.

Similarly, schools may also regulate and impose significant restrictions on the use of student property that is allowed to be brought on school grounds. Schools may require students to keep and store certain items in designated areas during the school day. Schools authorities, for example, may prohibit students from carrying backpacks into a classroom and may require students to keep their backpacks stored safely in assigned lockers while school is in session.

1.4. Law Enforcement Searches Require a Higher Standard of Justification Than Searches Undertaken by School Officials

When a search is conducted by a law enforcement officer, or by a civilian or non-law enforcement government official acting under the direction of or in concert with a law enforcement officer, the search must generally be based upon "probable cause" to believe that evidence of a crime will be discovered. This is a higher standard of proof than the "reasonable grounds" or "reasonable suspicion" standard used to justify a search conducted by school officials who are acting independently and on their own authority to maintain order and discipline. In addition, when a search is conducted by or at the behest of a law enforcement officer, the officer usually must first obtain a search warrant from a judge, unless the search falls into one of the narrowly drawn "exceptions" to the warrant requirement (such as a search "incident to a lawful arrest," the "automobile exception," "plain view," "consent," or "exigent circumstances").

2.0. SEARCHES BASED ON INDIVIDUALIZED SUSPICION

School officials will occasionally need to conduct a search (i.e., open a locker or inspect the contents of a student's bookbag) based upon a suspicion that a particular student has committed or is committing an offense or infraction, and the belief that the search of the particular location will reveal evidence of that offense or infraction. This kind of individualized or "suspicion-based" search must be kept legally and analytically distinct from a search where school officials do not have reason to believe that evidence will be found in a specific locker or other particularly identified location. The law governing more generalized or "suspicionless" searches and inspections, which are sometimes called "sweep," "dragnet," or "blanket" searches, such as a plan to periodically open randomly-

selected lockers or to have a drug-detector canine sweep through the hallways in search of drugs or firearms, is discussed in Chapter 3 of this Reference Guide.

2.1. School Searches Entail a Balancing of Competing Interests.

The United States Supreme Court in the landmark case of *New Jersey v. T.L.O.* employed a balancing test, weighing the constitutional rights of students against the need for school officials to maintain order and discipline. The most important Fourth Amendment right, and the one that lies at the heart of the *T.L.O.* decision, is the right of privacy. It is well recognized that one of the primary purposes of the Fourth Amendment is to safeguard the privacy and security of individuals — including schoolchildren — against arbitrary invasion by government officials. In this way, the Constitution imposes definite limits on the ability of school administrators and teachers to peek, poke, or pry into a student's private effects, such as purses/handbags, clothing, briefcases, backpacks, and even lockers and desks that are technically owned by the school district. School officials, in other words, must always respect a student's legitimate and reasonable expectations of privacy.

It is against this constitutionally-guaranteed right of privacy that the authority of officials to conduct searches must be balanced, since a "search" necessarily implies an act of peeking, poking, or prying into a closed area or opaque container. On the other side of the scales, of course, rests the undeniable and compelling right of all students, teachers, and administrators to work in a safe environment — one that is free of drugs, weapons, and violence, and that is conducive to education. In order to preserve such an environment, school officials have a substantial interest in enforcing codes of conduct and in maintaining discipline in the classroom and on school grounds.

The United States Supreme Court in *T.L.O.* recognized that maintaining order and discipline in the classroom has never been an easy task and has become especially difficult in view of the recent proliferation of drugs and violence. Even in schools that have been spared the most serious security problems, the preservation of order and of a proper educational environment requires close supervision of schoolchildren.

Events calling for discipline, moreover, often require prompt, effective action. Breaches of technical rules can quickly work to disrupt a school environment. (In the broader context of preserving safe neighborhoods, criminologists today often refer to the so-called "broken window" effect — the notion that the failure by government officials to respond promptly and decisively to comparatively minor problems or transgressions signals a lack of interest, thereby permitting if not encouraging more serious offenses and a further deterioration of the quality of life in the affected neighborhood.) For this reason, the United States Supreme Court in *T.L.O.* expressly recognized that a school may enforce all of its rules and code of conduct, not just those rules designed to deter the most severe forms of misconduct, such as violence and the use of weapons, substance abuse, and drug trafficking.

Finally, the Court in *T.L.O.* recognized that enforcing rules and preserving decorum require a high degree of flexibility. School officials will always want to maintain the informality that characterizes student-teacher relationships. Teachers are — first

and foremost — educators. They are not, nor should they be viewed as, adjunct law enforcement officers.

2.2. Applying the Standard of Reasonableness Established by the United States Supreme Court.

While children assuredly do not "shed their constitutional rights ... at the schoolhouse gate," *Tinker v. Des Moines Indep. Community Sch. Dist.,* 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), the United States Supreme Court recently reaffirmed that the nature of those rights is what is appropriate for children in school. *Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646, 115 S.Ct. 2386, 2395, 132 L.Ed 2d. 564, 580 (1995). After balancing the competing interests, the United States Supreme Court in the landmark *T.L.O.* case concluded that while the Fourth Amendment applies to searches conducted by teachers and school administrators, these non-law enforcement officials need not follow the strict procedures that govern police-initiated searches. School officials need not, for example, obtain a search warrant from a judge, which is usually required before police can conduct a search. The Court concluded that the warrant requirement would unduly interfere with the maintenance of the swift and informal disciplinary procedures that are needed in a school. 105 S.Ct. at 742.

Nor is it necessary that a search conducted by a school official be based on "probable cause" to believe that a crime has been or is being committed. Rather, the legality of a search conducted by school officials depends simply on the reasonableness of the search under all of the attending circumstances known to the school official undertaking the search. The cornerstone of reasonableness, moreover, is rudimentary common sense.

In order for a search to be reasonable, a school official must satisfy two separate inquires: First, the intended search must be justified at its inception. This means that the circumstances must be such as to justify some privacy intrusion at all. Second, and equally important, the actual search must be reasonable in its scope, , and intensity. The search should be no more intrusive than is reasonably necessary to accomplish its legitimate objective. School officials conducting a search based upon a particularized suspicion of wrongdoing are not allowed to conduct a "fishing expedition."

In analyzing this two-part legal standard, we will first discuss in § 2.3 how to determine whether an intended search is reasonable at its inception. Section 2.4 discusses how to conduct a search that is reasonable in scope, intensity, and .

2.3. When Can School Officials Initiate a Search?

Under ordinary circumstances, a search would be justified at its inception when the school official contemplating the search has reasonable grounds for suspecting that the intended search will reveal evidence that the student has violated or is violating either the law or the of the . The concept of "reasonable " is founded on common sense. A school official will have reasonable grounds if he or she is aware of objective facts and information that — ***taken as a whole*** — would lead a reasonable person to suspect that a rule violation has occurred, and that evidence of that infraction can be found in a certain place. A reasonably grounded suspicion is more than a mere hunch; rather, the school

official should be able to articulate the factual basis for his or her suspicion.

The decision to initiate a search entails a four-step analytical process:

Step 1. The school official must have reasonable grounds to believe that a law or school rule has been broken.

Step 2. The official must have reasonable to believe that a particular student (or group of students whose identities are known) has committed the violation or infraction.

Step 3. The official must have reasonable grounds to believe that the violation or infraction is of a kind for which there may be physical evidence. (This physical evidence — the object of the search — may be in the form of contraband [e.g., drugs, drug paraphernalia, alcohol, explosives or fireworks, or prohibited weapons]; an instrumentality used to commit the violation [e.g., a weapon used to assault or threaten another or burglar tools]; the fruits or spoils of an offense [e.g., the cash proceeds of a drug sale, gambling profits, or a stolen item]; or other evidence, sometimes referred to in the law as "mere" evidence [e.g., "crib" notes or plagiarized reports, gambling slips, hate pamphlets, "IOU's" related to drug or gambling debts, or other records of an offense or school rule violation].)

Step 4. The school official must have reasonable grounds to believe that the sought-after evidence — the type of which the official should have in mind before initiating the search — would be found in a particular place associated with the student(s) suspected of committing the violation or infraction.

2.3.1. The "Totality of the Circumstances."

In deciding whether there are reasonable to initiate a search, the teacher or school administrator may consider all of the attending circumstances, including, but not limited to, the student's age, any history of previous violations, and his or her reputation, as well as the prevalence of the particular disciplinary problem in question. The attending facts and circumstances, moreover, should not be considered in artificial isolation, but rather should be viewed together and taken as a whole. It is conceivable, for example, that a piece of information viewed in artificial isolation might appear to be perfectly innocent, but when viewed in relation to other bits of information might thereafter lead to a reasonable suspicion of wrongdoing. The whole, in other words, may be greater than the sum of its parts.

2.3.2. Reasonable is Less Than Proof Beyond a Reasonable Doubt.

It is critically important to recognize that the standard of reasonable grounds is not one that requires either absolute certainty or proof beyond a reasonable doubt. Nor does it require the level of proof that would be necessary before a school official could actually impose a disciplinary sanction. Consequently, ***a school administrator can entertain and act upon a reasonable suspicion that ultimately (or even quickly) turns out to have been mistaken.***

It is important for school officials to recognize that a search is not

unconstitutional merely because it failed to reveal the evidence expected to be found. Were it otherwise, the test would not be reasonable grounds, but rather one approaching absolute certainty. By the same token an unreasonable search is not made good by the fact that it fortuitously revealed evidence of a crime or school rule violation. The test is whether reasonable grounds exist at the moment that the search is initiated; whether the search actually discloses or fails to disclose the sought-after evidence is legally irrelevant in deciding the reasonableness of the search.

2.3.3. Direct Versus Circumstantial Evidence.

A school official does not require "direct evidence" that a purse or backpack, for example, contains evidence of an . (An example of "direct evidence" would include an observation by a school official that the student had placed contraband in the handbag, or a reliable statement made by another student claiming that he or she had actually observed the suspected evidence inside of the purse or backpack.) Rather, school officials are entitled to draw reasonable and logical inferences from all of the known facts and circumstances.

This is sometimes referred to as "circumstantial evidence." Despite popular misconceptions about the law, circumstantial evidence can be compelling, and is often used in court to establish proof beyond a reasonable doubt — a standard of proof far more demanding than probable cause or reasonable suspicion. Thus, if a student was observed to have been smoking in a lavatory while in possession of a purse or handbag, a school official could reasonably infer that cigarettes might be concealed in that purse or handbag, even though no one had actually witnessed the student place the cigarettes in that container. By the same token, if a student is determined to be under the influence of alcohol or drugs, it would be reasonable to infer that alcohol or controlled substances would be found in the student's locker, even though it is conceivable that the student came to school already in an inebriated state or had obtained the intoxicating substance from another student rather than from a stash of drugs or alcohol kept in the student's locker.

2.3.4. Relying on Hearsay and "Informers."

School officials are not bound by the technical rules of evidence and need not be concerned, for example, with the "hearsay" rule. Instead, school officials may rely on "second hand" information provided by others, even if done in confidence, provided that a reasonable person would credit the information as reliable.

As a matter of practical common sense, a school official should consider the totality of the circumstances, including such factors as the credibility of the source of the information based on past experience and reputation. A school official contemplating a search should be careful to scrutinize unattributed statements or information to make certain that they are not merely unsubstantiated rumors. The school official should also consider as part of the totality of the circumstances any other facts, statements, and details that might corroborate (or contradict) the information at issue and that would thereby tend to make the source of that information seem more (or less) trustworthy and reliable.

In some cases, school officials develop their reasonable grounds to conduct a search based in part on information provided by a confidential source, which in the law enforcement context is sometimes referred to as an "informant" or "informer." In the school setting, few students could be likened to the paid or professional informers who "work" for law enforcement agencies, or who are cooperating with law enforcement in consideration for a reduced sentence as part of a "plea bargain." Rather, information is typically provided to teachers and school administrators by students on an ad hoc and highly informal basis. For this reason, it is perhaps inappropriate to use an intimidating and colorful term such as "informant" to describe a student who reports facts or suspicious circumstances to school employees. That term is used in this Reference Guide only for convenience and because this terminology is frequently used in the case law that discusses when police may rely and act upon information supplied by private citizens, and when police and prosecutors may refuse to divulge the identity of a confidential source of information.

The law distinguishes between two different types of information sources: (1) information provided by persons who are themselves involved in criminal activity, and (2) information provided by persons for whom there is no reason to believe that they have committed crimes or are otherwise untrustworthy. These distinct circumstances are discussed in §§ 2.3.4a and 2.3.4b, respectively.

Although some students believe that it is inappropriate to "squeal" or "rat" on classmates, in fact, it is important that every member of the school community understand that they have a responsibility to contribute to the safety and security of their classmates and teachers. Students should be made to understand that it is not "cool" to engage in dangerous behavior, such as bringing drugs or weapons on to school grounds. Students must also understand that the best chance for ensuring a safe and secure environment is to let would-be offenders know that they face a significant risk of being caught precisely because their classmates have the courage to report offenses to their teachers and other appropriate school officials.

2.3.4a. Information Reported by Persons Involved in Criminal Activities.

For purposes of Fourth Amendment law, the phrase "confidential informant" generally refers to a person who has knowledge about someone else's criminal behavior because the informant is also involved in the criminal conduct about which he or she is reporting. These informants are said to be "involved in the criminal milieu" and are distinguished from so-called "citizen" informants, who are not believed to be in any way involved in criminal activity.

When judging the reliability of information provided by confidential informants, that is, persons who are themselves engaged in criminal activity, courts will examine the "totality of the circumstances" to decide whether the information provided is credible, and whether that information establishes probable cause (in the case of a law enforcement search) or reasonable grounds (in the case of a search to be conducted by school officials under the less stringent legal standard announced in *New Jersey v. T.L.O.*). A determination of probable cause or, where appropriate, reasonable grounds, will always take into account all of the facts and attendant

circumstances known to the police officer or school official, as well as all reasonable inferences that can be drawn from those facts or circumstances. Ultimately, the test under the Fourth Amendment is one of reasonableness: would a reasonable school official or police officer believe and rely upon the information provided by the confidential source, considering not only all information known about that source, but also other information that tends to support or contradict the informant's story.

Although the courts have rejected a rigid test to determine the reliability of confidential informants, it is still useful for analytical purposes to refer to what was once known as the "two-pronged" test of informant reliability. Although the United States Supreme Court has technically abandoned this "two-prong" test in favor of the more amorphous "totality of the circumstances" test, *see Illinois v. Gates,* 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the factors that constitute the "two-prongs" remain "highly relevant." *See Alabama v. White,* 496 U.S. 325, 328, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301 (1990).

The first "prong" to be considered requires the police officer (or school official) to examine the basis for the informant's knowledge. In other words, we must ask, how does the informant know about the suspected crime or incident that he or she is reporting? Was the informant present during an earlier criminal event or transaction? Did the informant actually see someone using or distributing drugs or carrying a weapon? Did the informant actually see another student place drugs or a weapon into a particular locker or container?

The second "prong" requires police officers or school officials to examine the veracity of the informant. Why would a reasonable person believe that this particular confidential informant — who is him/herself involved in criminal activity — is telling the truth? Often, this question is answered by looking at the informant's reputation for truthfulness and his or her "track record" for providing information that has proven to be reliable and truthful in the past.

School officials or police officers should look closely to any motives that the informant may have to lie, as well as to the amount of detail that the informant can provide. When the informant is able to provide these so-called "self-verifying details" about the suspect's criminal conduct, then government officials are better able to determine whether the informant's information is accurate.

One way to bolster a weak "prong" is to conduct some kind of further investigation to corroborate the informant's story. This independent investigation should be conducted before a full-blown search is undertaken. Recall that the legality of a search will be determined on the basis of the information that was known to school officials or police officers at the time the search was conducted. An unlawful search cannot be justified by what it reveals, or by information that might have been available to the official conducting the search but that was not actually known and relied upon.

School officials or police officers should always try to determine whether there is any other information that is known or readily available that would lend credibility to the informant's story, including information provided by another independent source and/or an examination of the record or reputation of the person

the informant alleges to be involved in criminal activity.

There are a number of other ways to corroborate information provided by an informant. In many cases, it may be appropriate to conduct a surveillance of the suspect (which is not a search under the Fourth Amendment) to see if the suspect engages in any suspicious conduct that would tend to corroborate the information provided by the confidential source, thus indicating that the informant was telling the truth.

2.3.4b. Information Provided by Innocent Victims and Witnesses.

As noted above, and especially in the school setting, many if not most "informants," that is, persons who supply information to school officials, are not themselves involved in criminal activity or infractions of school rules. These sources are sometimes referred to in the case law as "citizen" informants. They may be innocent witnesses or even the victims of another's unlawful behavior.

There is no reason to assume that a citizen informant — one who is not part of the so-called criminal milieu — is lying when he or she reports suspicious behavior. For this reason, it is not necessary to establish the second "prong" of the above-described two-pronged analysis. Rather, when school officials learn that information is provided by a citizen informant, they can assume that the person is being truthful.

School officials should still consider whether there is some basis for the student's knowledge of the reported criminal activity. If, for example, the information learned of concerning a criminal violation or school rule infraction comes from yet another source (i.e., second-hand information), school officials should try to determine whether the original source of the information was reliable. As children, we all played the game "telephone," in which a story would be handed down from playmate-to-playmate until the final version bore little resemblance to the original. School officials in deciding whether information provided to them constitutes "reasonable grounds" must always consider the original source of the information.

2.3.4c. Anonymous Tips.

In common parlance, the terms "anonymous" and "confidential" are sometimes used interchangeably when referring to a source of information. News reporters, for example, will often refer to an "anonymous source" when they really mean a known source of information who has given information with the understanding that the reporter will not reveal the source's identity. In the law, and for the purposes of this Reference Guide, the two terms have distinctly different meanings. An "anonymous" source, sometimes referred to as a "tipster," is one whose identity is unknown to the official receiving and relying upon the information. These kinds of sources are discussed in this section. A "confidential" source, in contrast, is a person whose identity is known to the official receiving and relying upon the source's information, but the official has impliedly or expressly agreed not to disclose the person's identity to others as a practical means of encouraging the person to provide the information.

On some occasions, information about criminal activity or school rule infractions will be provided to school officials

anonymously (i.e., e.g., by means of a unsigned letter). When that occurs, there is no way to know if the individual providing the information was involved in the criminal activity or otherwise has a motive to lie. It may also be difficult if not impossible to demonstrate the tipster's basis of knowledge unless he or she happens to relate that information. (Obviously, when school officials do not know the identity of the source, it is usually not possible to contact the source to obtain more detailed information.) For this reason, as a general proposition, an anonymous tip, by itself, will not constitute reasonable grounds to justify an immediate search by school officials. Compare *Alabama v. White*, 496 U.S. 325, 328, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301 (1990) (holding that as a general rule, an anonymous tip provided to police will not, by itself, constitute reasonable articulable suspicion to justify an investigative detention).

This does not mean that in all cases an anonymous tip is not enough to justify a search conducted by school officials. Rather, the reasonableness of the search will depend upon all of the known circumstances and must be decided on a case-by-case basis. It is especially important to consider the seriousness of the suspected violation and any harm posed to the school community, such as where the tip relates to a firearm or explosives device claimed to be on school grounds. The point, however, is that before conducting a search, school officials should pursue all available investigative options that do not entail an invasion of a student's privacy, such as checking with others to determine whether they may be aware of information that corroborates (or refutes) the anonymously-provided information, or by conducting some form of surveillance.

2.3.5. Information Learned From the Suspect or His/Her Behavior.

Some facts or suspicious circumstances may develop during the course of conversing with a student. (As a general proposition, when a school official has a suspicion of wrongdoing but is not certain whether there is a factual basis to conduct a search, the better practice is to conduct a further investigation to gather more facts, such as by talking to the student involved or other students or school staff members who may have information that can confirm or dispel the suspicion of wrongdoing.)

For example, a student during a conversation may become nervous, excited, or even belligerent. These reactions may in appropriate circumstances constitute evidence of a consciousness of guilt. So too, a student may make a so-called "furtive" movement, such as clutching a bookbag or attempting to conceal an item from the school official's view. Again, these reactions may add to the official's initial suspicion, especially if in response to questioning, the student denies making movements that the school official personally observed. (Lying is always a relevant factor that should be considered as a part of the "totality of the circumstances.")

2.3.6. Flight.

If students scatter from a place known to be used to commit frequent infractions, such as a room or outdoor location where students frequently congregate to smoke, a school official could reasonably infer that students fleeing from that location had been engaged in that prohibited conduct. So too, flight from a place where an

offense was just committed would support the suspicion that the fleeing students were involved in the offense. Note also that if a student flees in response to an imminent locker inspection or canine drug-detection sweep, there would seem to be reasonable grounds to believe that the fleeing student is trying to conceal, discard, or destroy some form of contraband before it can be discovered by school authorities or police officers.

2.3.7. Relying on Sense of Smell.

In determining whether reasonable grounds to search exist, school officials may use all of their senses, including their sense of smell. Since the recognized smell of marijuana has been held by the courts to constitute full probable cause, school officials would have reasonable grounds to conduct a search if they detect the smell of marijuana or burning tobacco.

2.3.8. Stolen Items.

Before a school official undertakes a search to look for a stolen object, there should be a reliable report that something is missing. *See M.M. v. Anker,* 477 F.Supp. 837, 839 (E.D. NY 1989), aff'd 607 F.2d 588 (2nd Cir. 1979). Absent such a report, it is hard to imagine how a school official could have a reasonable basis upon which to launch a search for stolen property. The report should be specific enough so that the school official would be able immediately to recognize the missing item(s), and so that the official would know what to search for and when to stop searching upon discovering and securing the sought-after evidence. (See also § 2.3.10 concerning the number of students who may be searched in response to the reported theft of public or private property.)

2.3.9. Staleness.

The information available must provide the school official with reasonable grounds to believe that the sought-after evidence is presently located at the place or container to be searched. The test, after all, is whether there is reason to believe that the sought-after item(s) will be found at the place where the search is to be conducted. School officials should therefore carefully consider whether any or all of the bits of information relied upon are "stale."

This determination will hinge on the nature of the suspected infraction as well as the nature of the source of information. Some offenses are of a fleeting nature or are likely to be a one-time event. For example, in the case of some infractions, such as the theft of school equipment or tools, the evidence is more likely to be taken home relatively soon after the theft, rather than being stored for long periods of time in a locker or elsewhere on school grounds. Other offenses, in contrast, may be of a more protracted and ongoing nature, such as school-based drug dealing or the operation of a gambling enterprise.

School officials presented with reliable information that a weapon was ever brought on to school property by a particular student should proceed as if the weapon is still on school grounds unless there is more recent evidence to suggest that the weapon has since been removed from the school. In other words, where a weapon and especially a firearm is involved, school officials should not assume that otherwise reliable information is stale, even if a significant period of time has lapsed since the last time that the weapon was seen or reported to be on school grounds.

In any event, school officials should always try to determine from their information source when was the last time that the suspect student was engaged in the alleged unlawful behavior, and when was the last time that someone actually saw the sought-after evidence or had reason to believe that evidence was at the location to be searched.

2.3.10. Focusing on Particular Suspects.

Ordinarily, a search should be based on reasonable grounds to believe that the particular individual who is to be searched has violated the law or school rule, and that evidence of the infraction would be found in his or her possession. There are many conceivable instances, however, where a given search may be reasonable even in the absence of a suspicion that is limited to a single individual. In other words, a school official may develop and act upon a reasonably-grounded suspicion of wrongdoing that, by its nature, is simply not limited to a single, specific individual or place.

he Hawaii Supreme Court, in the case of *In the Interests of Doe,* 887 P.2d 645 (Haw. 1994), held that it was reasonable for school officials to search a student based upon the odor of burning marijuana emanating from a confined area in which several students were present. The court held that the official's suspicion was reasonably narrowed to the four students found in the culvert area, and further narrowed to this particular student because she was one of two students carrying a purse that might be used to conceal suspected drugs. The court thus found, ultimately, that the facts known to the officials constituted sufficiently-individualized suspicion to justify the search.

More recently in *DesRoches by DesRoches v. Caprio,* 974 F.Supp. 542 (E.D. Va. 1997), the federal district court addressed whether school officials could search a large group of students for stolen property when school officials suspected that a student within the group was guilty of the larceny, but the officials lacked individualized suspicion as to any particular student. The court noted that:

> In some situations, the number of suspects may be so small that the entire group of students may be searched without violating the requirement of individualized suspicion because "sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment ... ." A school is not required to muster evidence that a student to be searched is the only potential suspect before a search may be conducted. For example, if two students were in a sealed room when a theft occurred, it is reasonable to search both these students because enough suspicion as to each student exists to support a search based upon reasonable suspicion. At the other extreme, if one hundred students were in the sealed room, a search of all of them for a single stolen item surely would be unreasonable. 974 F.Supp. at 449-550 *(citation to New Jersey v. T.L.O.* and other United States Supreme Court authority omitted).]

In determining the maximum number of students that can be subject to an "individualized" search, courts will also look to whether school officials have used other, less intrusive means to pursue the investigation and thus to begin a process of

elimination, excluding from the group to be searched those for whom a reasonable suspicion of wrongdoing has been dispelled. In *Burnham v. West,* 681 F.Supp. 1160 (E.D. Va. 1987), for example, the court ruled that the search of a group of students was unconstitutional in part because of the "striking paucity of investigative measures reasonably calculated to narrow the field of suspects." *681 F.Supp. at 1166*.

As importantly, courts in determining how many students may be lawfully searched will look to the nature of the evidence being sought and the seriousness of the suspected infraction. Most cases where non-individualized searches of students have been upheld involved searches for drugs or weapons, where there is a demonstrated need to protect the safety and welfare of students. *See e.g., In re Alexander B.,* 220 Cal. App.3d, 1572, 270 Cal.Rptr. 42 (2nd Dist. 1990) (upholding search of five or six students when one student in the group reportedly had a gun). In the above-quoted *DesRoches* case, the court ultimately ruled that a search of all nineteen students in a class, especially when it was not even certain that one of them was the guilty party, casts too wide a net when the offense that had been committed was a petty larceny of an object that could not harm others. 974 F.Supp. at 550.

2.3.11. Impermissible Criteria for Conducting a Search.

Any search conducted under the authority of *T.L.O.* must be reasonable — that is, based upon articulable reasons — and must not be arbitrary. ***Under no circumstances may a search be based on a school official's personal animosity toward an individual or group of students. Nor may searches be based on such impermissible criteria as a student's race or ethnic origin. Invasions of privacy predicated on such impermissible and discriminatory criteria are blatantly contrary to the Constitution's fundamental guarantees, and cannot be tolerated.***

2.3.12. Gang Membership.

Ordinarily, a search may not be based solely on the fact that a student is a member of a particular group, even if other members of that group are often associated with criminal offenses or violations of district policy. The courts have consistently held that a person's membership in a group commonly thought to be suspicious is insufficient by itself to establish reasonable suspicion. *See Reid v. Georgia,* 448 U.S. 438, 441, 100 S.Ct. 2752, 2754, 65 L.Ed.2d 890, 894 (1984) (***drug "profile" alone does not establish reasonable suspicion***).However, school officials may consider, as part of the totality of the circumstances, the fact that a student is a member of a youth or street gang, especially if members of that particular gang are known to carry (or are expected to carry) concealed weapons.

2.4 Manner in Which School Officials May Conduct a Search.

Having established the grounds upon which a search may be initiated, it is next necessary to discuss the scope of the actual search, that is, the degree to which the teacher or school administrator may peer into or poke around a student's belongings. A search must be no broader in scope nor than is reasonably necessary to accomplish its legitimate objective.

2.4.1. Following a Search Plan.

Even if a particular search occurs on the spur of the moment based upon information just learned, the school official conducting the search should follow a logical strategy designed to minimize the intrusiveness of the search and to complete the search as quickly and easily as the circumstances allow. The search, in other words, should be viewed as a step-by-step process.

The better practice in many cases will be to confront the student suspected of committing the violation and to explain precisely what you are looking for before you being to conduct a physical search. (This practice is roughly analogous to the so-called "knock and announce" rule, whereby police officers conducting a search are generally required to announce their identity and purpose before entering a residence. *See Wilson v. Arkansas,* 514 U.S. ___, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995).) This would give the student an opportunity to confirm where the sought-after item is located (thus making it unnecessary to search other locations), or better still, to surrender the object (thus making it unnecessary for school officials to open a locker or container and rummage through its contents). It is especially important to afford this option to the student before subjecting him or her to a physical search of his or her person.

There may be circumstances, however, where this practice should not be followed, as where there is a suspicion that a firearm is being kept in a locker and where it would be imprudent to afford the suspect student an opportunity to handle the weapon. In that event, the better practice might be to call the police rather than to confront the student.

Where the school official does conduct the actual search, he or she should begin at the location where the sought-after item is most likely to be kept, based upon available information, reasonable inferences, and customary practices. (Often there will be reasonable grounds to search more than one place, such as a regular locker, a gym locker, and a backpack being worn by the student, etc.). Note, however, that depending on the available information and the nature of the infraction, it may in any event be appropriate to search all of these locations, even if the student has surrendered some contraband. Thus, for example, a school official who has reasonable grounds to believe that a student is selling drugs in school may ordinarily search that student's locker even if the student has surrendered drugs kept on his person and denies that more drugs are being kept in his locker.

Because a physical search of a student constitutes the most serious (and risky) form of Fourth Amendment privacy intrusion, school officials should not begin by searching a student's person where there are also reasonable grounds to believe that the sought-after item(s) is being kept in a locker or in a backpack or other container that can easily be separated from the student, unless, of course, the information relied upon to conduct the search suggests that the item(s) will most likely be found in the clothing that the student is wearing. (Even then, where possible, the student should be asked to remove an outer garment before the school official begins searching through its pockets and comes into direct physical contact with the student.) The special rules governing searches of persons are discussed in more detail in §2.4.6.

Finally, when school officials do open a locker or container, they generally should conduct a visual inspection for the sought-after item(s) before rummaging through and removing personal possessions that clearly are not the sought-after evidence or are not immediately recognized to be contraband or other evidence.

2.4.1. Identifying the Object of the Search.

A search will be permissible in its scope when it is reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction. Once again, the permissible scope of any search is bounded by the dictates of common sense. This presupposes, of course, that the official conducting the search has firmly in mind what he or she expects to find. The official must therefore be able to articulate the object of the search. School officials are never permitted to undertake a "fishing expedition."

Physical evidence — the object of the search — may be in the form of contraband (e.g., drugs, alcohol, explosives or fireworks, or prohibited weapons); an instrumentality used to commit the violation (e.g., a weapon used to assault or threaten another or burglar tools); the fruits or spoils of an offense (e.g., the cash proceeds of a drug sale, gambling profits, or a stolen item); or other evidence, sometimes referred to in the law as "mere" evidence (e.g., "crib" notes or plagiarized reports, gambling slips, hate pamphlets, "IOUs" related to drug or gambling debts, or other records of an offense or school rule violation).

2.4.3. Relationship Between the Object Sought and the Place/Container Searched.

Obviously, there must be some logical and reasonable connection between the thing or place to be searched and the item that is expected to be found there. A school official's reasonable suspicion that a particular student has stolen a textbook, for example, would not justify a search of that student's clothing or even a purse if that container is simply too small or otherwise ill-suited to conceal the missing textbook.

When a school official has reasonable to conduct a search of a student's locker, the school official would also be authorized to open and inspect any closed containers or objects that are stored in the locker, ***provided that there are reasonable grounds to believe that the sought-after item could be concealed in the container that is to be opened***. It would make no sense, after all, to permit school authorities to inspect the contents of a locker, but prohibit them from inspecting the contents of a stored in the locker and in which drugs or weapons could easily be concealed. Indeed, it is unlikely that drugs, for example, would be strewn loosely or haphazardly in the locker; rather, it is far more likely that a drug-selling or using student would further conceal and store the drugs in some form of portable container.

Obviously, of course, any container that is to be opened must be of a type capable of concealing the sought-after evidence. It should be noted, however, that where the object of the search is illicit drugs or drug paraphernalia, school authorities would have wide latitude in opening containers found in the student's locker, since drugs and paraphernalia could reasonably be found even in very small containers.

Furthermore, school officials should consider whether the container or place to be searched is of a kind commonly used to store or conceal the type of evidence that the school official is seeking. School officials might consider, among other things, whether previous searches of such containers or places have resulted in the discovery of this kind of evidence. School officials could also rely upon any drug and weapons recognition training that might have been provided by local law enforcement authorities, during which school officials would be provided information concerning those drugs that are thought to be most commonly used by adolescents in the jurisdiction and how these substances and related paraphernalia are typically packaged and concealed.

If reasonable grounds exist to believe that a student may be in possession of a weapon, before opening a handbag or backpack, the school official should determine whether the container is heavy enough or otherwise suited to hold the evidence being sought. Although probably not required in a strict constitutional sense, it would not be inappropriate for school officials to carefully probe the outside of a soft container to determine whether it may conceal the object being sought, since the act of subjecting the container to this form of touching, while technically a search under the Fourth Amendment, constitutes a lesser degree of intrusion than does the act of opening the container, thereby revealing all of its contents, including non-contraband items that might be embarrassing to the student if revealed. *See In re Gregory M.,* 82 N.Y.2d 588, 606, N.Y. S.2d 579, 627 N.E.2d 500 (1993) (court concluded that the student had only a minimal expectation of privacy regarding the outer touching of his school bag by school security personnel, even though the touching was done for the purpose of learning something regarding its contents). *Compare Minnesota v. Dickerson,* 508 U.S. 366, 113 S.Ct. 2130, 124 LEd.2d 334 (1993) (holding that police officers conducting a protective "frisk" for weapons may not squeeze, slide, or otherwise manipulate the contents of a suspect's pocket before removing an object that is not believed to be a weapon.)

Furthermore, a search should be no broader in scope nor longer in duration than is reasonably necessary to fulfill its legitimate objective. A suspicion that a student's b conceals drugs would not permit a school official to read a diary or journal kept in the b (unless these were reasonable grounds to believe that the journal documented debts owed in drug transactions). Furthermore, as noted in § 2.4.8, school officials should be careful not to damage property belonging to the student.

2.4.4. Searches Should be Conducted in Private.

One of the most important ways that school officials can minimize the intrusiveness and negative consequences of a search is to take steps to make certain that the search is not conducted in the presence of other students. The discovery of contraband or personal objects in the presence of one's classmates may subject a student to unnecessary ridicule. Moreover, any distress or stigma arising from what turns out to be a false accusation can be minimized by keeping the entire process confidential. A search of a student's personal belongings, such as a purse or backpack, should therefore ordinarily be done in private in the principal's office or some other suitable location away from the

general student body. (From a practical perspective, moreover, it is generally appropriate to conduct searches out of the presence of classmates, since this might remove an incentive for the student who is the subject of the search to resist or otherwise to "show off" or display machismo. It also reduces the risk that other students involved in unlawful behavior might try to rescue contraband or otherwise interfere with the search.) Similarly, a search of a locker should ordinarily be conducted under circumstances where other students are not present.

Although searches should be conducted in private, it is often preferable to conduct the search in the presence of the student who owns or controls the property being searched. This approach is useful for a number of reasons. First, the student can assist in the search, thus minimizing the degree of intrusion or "poking" and "prying." (This assumes that there is no reason to believe that the student will resist or interfere in the search process, try to conceal or destroy evidence, or reach for and use a concealed weapon. If such concerns exist, the student should not be present, or at least should not be allowed to enter the place or handle the object to be searched.)

Second, the student may be able to answer questions concerning the nature or ownership of any objects discovered during the search, making it easier to conduct prompt follow-up investigations and to identify other students who may be involved in unlawful activity on school grounds.

Although searches should be conducted in private and away from other students, it is generally advisable that at least one other school official be present to serve as a witness, especially if the search will entail a physical touching of the student.

2.4.5. Consider the Psychological Effect of the Search.

Conscientious teachers and school administrators should always carefully consider the emotional well-being of the student and the risk that the discovery of items of personal hygiene, contraceptives, personal notes from friends, fragments of love poems, caricatures of school authorities, or other highly-personal items or implements might embarrass a sensitive adolescent.

2.4.6. Searches of Persons and "Strip Searches."

2.4.6a. General Considerations.

In *Horton v. Goose Creek Indep. Sch. Dist.,* 690 F.2d 470 (5th Cir.) cert. denied, 463 U.S. 1207, 103 S.Ct. 3536, 77 L.Ed.2d 1387 (5th Cir.) (1982), the court noted that, "society recognizes the interests in the integrity of one's person, and the Fourth Amendment applies with its fullest vigor against any indecent or indelicate intrusion on the human body." 677 F.2d at 480. For this reason, school officials, and police officers as well, should be especially cautious before undertaking a search of a student's person. In at least one case cited in a footnote in *New Jersey v. T.L.O.*, a court expressly held that a higher standard of justification (approaching full probable cause) applies where the search is "highly intrusive." *See M.M. v. Anker,* 607 F.2d 588, 589 (2nd Cir. 1979). In other words, as the intrusiveness of a search intensifies (the *Anker* case involved a "strip search" of a female student for some unidentified stolen object), the standard of Fourth

Amendment reasonableness approaches probable cause even though the search is conducted by school officials. School officials should be mindful that courts will more closely scrutinize the facts justifying a search where the search is particularly intrusive, such as one that involves a physical touching of a student's person.

Furthermore, the United States Supreme Court in *New Jersey v. T.L.O*. expressly warned that the scope of the search must not be "excessively intrusive in light of ... the nature of the suspected infraction." 105 S.Ct. at 735 *(emphasis added)*. This suggests that students should ordinarily not be subjected to a physical touching to find evidence of comparatively minor infractions of school rules, such as chewing gum, candy, or snack foods. Although the Court in *T.L.O*. made clear that school officials are authorized to enforce all school rules, and to conduct reasonable searches to secure evidence of any infraction, school officials must always use common sense and should carefully consider the seriousness of the suspected infraction before conducting a physical search of the student's person or before using force or threat of force to effectuate any such search. In sum, courts are likely to afford school officials more latitude in conducting a search for a suspected gun or switchblade than a search for cigarettes.

In *Jenkins by Hall v. Talladega City Bd. of Educ.,* 95 F.3d 1036, (11th Cir. 1996), the Federal Court of Appeals for the Eleventh Circuit attempted to devise a meaningful scale or ranking of the seriousness of offenses that might justify various levels of privacy intrusion. The court noted:

> It is obvious that an infraction that presents an imminent threat of serious harm — for example possession of weapons or other dangerous contraband — would be the most serious infractions in the school context. Thus, these offenses would exist at one end of the spectrum. Thefts of valuable items or large sums of money would fall a little more toward the center of the spectrum. Thefts of small sums of money or less valuable items and possession of minor, non-dangerous contraband would fall toward the opposite extreme of the spectrum. Such infractions would seldom, and probably never, justify the most intrusive searches. [95 F.3d at 1046-1047.]

School officials must be especially cautious in touching a student's crotch area (or female breasts), since such contact constitutes a particularly intrusive form of search. Regrettably, in some jurisdictions, weapons and drugs are routinely concealed by students in the crotch area precisely because students know that school officials will be reluctant to conduct a thorough search that would entail touching the clothing that covers these private parts of the human anatomy. To some extent, baggy, oversized trousers have become popular with gang members precisely because such clothing makes it easier to conceal drugs and weapons.

In any case where the search will involve any physical touching of a student by a school official, the better practice would be to have another school employee present as a witness to reduce the chance that a student would falsely accuse the official of misconduct and also to reduce the likelihood that the student would forcibly resist the search. It is strongly advised that any physical touching be done by a school official of the same gender as the student. Recall also that all searches, and especially

searches of the person, should be conducted in private and away from other students. See Chapter 3.2B(1).

2.4.6b. "Strip Searches."

There are few subjects within the field of search and seizure law that are more sensitive than the question as to when and under what circumstances governmental officials may conduct a "strip search." Note that the term "strip search" includes but is not limited to "nude" searches and generally includes a search that reveals a person's undergarments. Although such conduct by certain governmental officials (i.e., police or corrections officers) may, in certain limited circumstances, be appropriate and even necessary to protect the public, strip searches constitute a gross invasion of privacy, especially when the subject of a strip search is a child. Without question, strip searches are among the most intrusive of searches. In *MaryBeth G. v. City of Chicago,* 723, F.2d 1263, 1272 (7th Cir. 1983), the court referred to strip searches as "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission." Moreover, "the perceived invasiveness and physical intimidation intrinsic to strip searches may be exacerbated for children." *Jenkins by Hall v. Talladega City Bd. of Educ.,* 95 F.3d 1036, 1039 (11th Cir. 1996)*; see also Justice v. City of Peachtree City,* 961 F.2d 188, 192 (11th Cir. 1992) ("[c]hildren are especially susceptible to possible traumas from strip searches." (internal quotation marks omitted)). A strip search performed by someone of a different gender from the person searched would be considered significantly more intrusive than a same-sex search. *See Jenkins by Hall v. Talladega City Bd. of Educ., supra*, 95 F.3d at 1044, n. 15 (11th Cir. 1996).

It is also important to note that state statutes may prohibit school officials from engaging in conduct that might not be unconstitutional. The Legislature, of course, is free to afford students and other citizens greater rights and protections than are minimally guaranteed by the State and Federal Constitutions.

As noted above, the term "strip search" may include conduct beyond a "nude" search and would include the removal or re-arrangement of clothing for the purpose of visual inspection not only of the subject's buttocks, anus, genitals, and breasts, but undergarments as well. In light of the fashion trend to wear multiple layers of clothing, a sweater or shirt worn under a sweatshirt, jacket, or vest should not be considered to be an undergarment unless it is in direct contact with the student's skin. Note that if a school official were to request (or order) a student to produce an object concealed on his or her person, this conduct would constitute a search, but not necessarily a "strip search," even if the object is located in the crotch area or in a brassiere, provided that there is no touching by a school official of the student nor significant exposure to view of the student's undergarments or nude body. Furthermore, the general prohibition against strip searches would not apply where the removal or re-arrangement of clothing is not done to effect a search for evidence, but rather is reasonably required to render medical treatment or assistance.

In jurisdictions where school officials are not flatly prohibited by statute from conducting a strip search, such privacy intrusions may, in limited circumstances, be deemed to be reasonable under

constitutional analysis. Consider that in *Cornfield v. Consol. High Sch. Dist. No. 230,* 991 F.2d 1316 (7th Cir. 1993), public high school officials conducted a search of a male high school student who was suspected of carrying drugs in his crotch area, based on an observed unusual bulge. Two male school officials accompanied the student to the boys' locker room to conduct the search. The school officials made certain that no one else was present in the locker room and then locked the door to ensure that the search would be conducted in private. The school officials stood at a distance of 10 to 12 feet from the student when they ordered him to remove his street clothes and put on a gym uniform. The school officials visually inspected the student's naked body and physically inspected his clothes. They found no evidence of drugs or any other contraband.

The student filed a civil rights action under 42 U.S.C. § 1983. The Court of Appeals for the Seventh Circuit affirmed the trial court's order granting summary judgment in favor of the school officials. The court in summarily dismissing the lawsuit noted that no one could seriously dispute that a nude search of a child is traumatic. The court nonetheless found that school officials had reasonable grounds to believe that the student was hiding drugs in his crotch area (note that a search is not unconstitutional merely because no evidence was found), and that the suspicion justified the search in the careful manner in which it was conducted.

2.4.6c. Following a Careful Search Plan.

As with any search, a school official preparing to search a student's person should follow a logical plan of action that is designed to minimize the intrusiveness of the search to the greatest extent possible. Thus, for example, a school official who has reasonable grounds to believe that a student is carrying contraband or evidence of an offense or infraction on his or her person should ordinarily follow these steps in sequence:

Step 1. Bring the student to the principal's office or other location away from other students.

Step 2. Make certain that at least one other school official is present to serve as a witness and to assist in the search if necessary. (Note that any physical touching of the student should generally be done by a staff member of the same sex as the student.)

Step 3. Clearly identify your authority and purpose, indicating the specific kind of object that you are searching for (e.g., a weapon, drugs, etc.).

Step 4. Give the student an opportunity to surrender the sought-after object(s).

Step 5. Require the student to put down any handbag or backpack and/or to remove outer garments so that these objects can be searched without physically touching the student's person.

Step 6. Require the student to empty his or her pockets unless the sought-after item is a weapon and there is reason to believe that the student might use the weapon to commit an assault. School officials in making this determination should consider the totality of the known circumstances, including the student's present state of mind and

reaction to the encounter (e.g., belligerent, cooperative, etc.) and his or her reputation for violence or for resisting authority.

Step 7. If the object of the search is a firearm or metal weapon and a hand-held metal detector is readily available, the device should be used to identify the exact location of the weapon and to identify pockets or areas that do not contain metal objects and that need not be touched or opened.

Step 8. Begin any touching of the student's actual person in the place most likely to conceal the sought-after object.

Step 9. Conduct a "frisk" or "pat down" before actually reaching into a pocket to determine whether there is anything present that might be the sought-after object. If this limited tactile search of the outer clothing does not reveal the presence of an object that could be the subject of the search, the school official should not conduct any more invasive search of that location unless the nature of the evidence sought or of the clothing is such that a limited pat down would not in any event have revealed the presence of the sought-after evidence.

Step 10. While conducting a "frisk" or "pat down" of the student's clothing, school officials should not slide or otherwise manipulate an object in a pocket unless the object reasonably could be the item being sought, or unless it is immediately apparent after the initial touching that the item is a weapon or other contraband that you did not expect to find. (See discussion of the "plain feel" doctrine in §2.4.12.)

Step 11. Immediately stop searching when the object of the search is found and secured unless there are reasonable grounds at that moment to believe that the student is carrying yet additional evidence of a serious offense or infraction that would independently justify a search of the person.

2.4.7. Avoid Reading Private Materials.

During the course of a lawful search, school officials may come across letters, notes, journals, diaries, address books, appointment calendars, and other items that are likely to include private correspondence or ruminations. School officials should not open a book, access an electronic diary, or read any written material unless there are reasonable grounds to believe that such materials are evidence of a violation of the law or school rules. If, for example, the legitimate objects of the search are "crib" notes, stolen homework or tests, plagiarized reports, hate pamphlets, or other written materials, then school officials should conduct a cursory initial inspection of any written materials discovered to determine if they are the items being sought. School officials must stop reading these materials immediately upon determining that they are not the objects of the search.

Note that under the plain view doctrine, a school official may not open, peruse, or seize a book or other item that is not the object of the initial search unless it is immediately apparent that such book or item is evidence of another heretofore

unsuspected infraction. See *Minnesota v. Dickerson,* 508, U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993). Thus, for example, a school official searching a locker for a suspected weapon could not open a book unless it was immediately apparent from a visual inspection of its exterior that it is evidence of an infraction, or, unless judging by its weight or other information, there are reasonable grounds to believe that it has been "hollowed out" to conceal the sought-after weapon. Note, however, that where a student is suspected of selling drugs or engaging in gambling activities, the object(s) of the search might include records of drug transactions and debts. In fact, in *New Jersey v. T.L.O.*, the assistant vice-principal discovered and seized a slip of paper that recorded "IOU's" for marijuana purchases.

2.4.8. Avoid Damaging Student Property.

Obviously, school officials during the course of conducting a search should to the greatest extent possible avoid causing damage to any property belonging to the student. Thus, for example, in the absence of compelling reasons, a school official should not break open a locked container without first providing the student an opportunity to surrender the key or provide the combination.

2.4.9. Avoid Using Force.

School officials should avoid using force to effectuate a search wherever possible, and ***where force must be used, it should be no greater than that necessary to restrain the student and protect against the destruction of evidence or the use of a weapon***. Furthermore, before actually deploying physical force, school officials should warn the student that force will be used to effectuate the search or seizure, thus providing the student a last opportunity peacefully to submit to authority.

School officials are reminded that where force or threat of force is necessary and appropriate, the better practice may be to summon the police. In many cases, moreover, students will submit peacefully to the search once they are told that unless they comply with a demand to empty their pockets or turn over a backpack, the police will be summoned to assume responsibility for effectuating the search.

As noted in § 2.4.4, one way to reduce the likelihood that actual or threatened force will be necessary is to first confront the student and conduct the search in the principal's office or at some other location away from the student body. By isolating the student, school officials can eliminate the incentive for the student to try to impress peers by resisting. This tactic also serves to reduce the possibility that other students might come to the suspect's rescue, create a disturbance, or otherwise try to interfere with the search or intimidate outnumbered school officials.

2.4.10. Searches are Not a Legitimate Form of Punishment.

It is important to note, even at the risk of stating the obvious, that the method chosen to execute a search (or the decision to undertake a search in the first place) must never be used to harass, intimidate, or punish a student. The only legitimate objective of a search is to find evidence of a suspected criminal violation or school rule infraction. A search may not be used as a form of discipline or, worse, retribution. School officials must never subject a student or his or her property to a

more intensive, intrusive, or protracted form of search than that necessary to reveal the sought-after evidence because the student "mouthed off," refused to cooperate, or otherwise embarrassed or undermined the authority of a school official. Any search undertaken in anger is more likely than not to be unreasonable and unlawful.

2.4.11. When to Stop Searching.

Because every search must be geared to its legitimate objective, a search should ordinarily cease when the particular item(s) being sought has been found and taken into custody, provided, of course, that there is no basis for continuing to search for other suspected items. Naturally, if a given search is based on a reasonably grounded suspicion that drugs will be found, the school official need not automatically stop upon the discovery, for example, of the first marijuana cigarette or packet of white powdery substance. Rather, the school official, as part of the initial search, may continue to look for other evidence of drugs or drug paraphernalia in any place where such drugs or items might reasonably be concealed. The continuation of the search after the initial discovery of some incriminating evidence is justified by the initial suspicion that some drugs might be discovered.

If, on the other hand, the initial search was based on a suspicion that the student was in possession of a particular stolen textbook, the search should stop upon the discovery of that textbook unless, based on all of the known circumstances, the school official has since developed a reasonable suspicion that the student is also in possession of other stolen items or some other form of contraband.

On occasion, evidence or information discovered during the course of a reasonable search, when viewed in relation to other reliable facts and information known to the school official, may suddenly provide a reasoned basis for an entirely new suspicion of wrongdoing. If that occurs, the newly-developed reasonable suspicion might, in turn, justify either a new search or else a more expansive continuation of the initial one.

Thus, for example, a school official who is reasonably searching a student's purse for cigarettes and who unexpectedly comes upon a small glass pipe might at that point have reasonable grounds to believe that the purse or handbag contains marijuana or cocaine in addition to conventional cigarettes. In that event, the school official could continue to search for both cigarettes and drugs. Thus, in *T.L.O.*, it was not unreasonable for the assistant vice-principal who was looking for cigarettes to suspect that the student was also concealing marijuana in her purse when he discovered rolling papers (which were often used by students to produce marijuana cigarettes) at the same time that he found the sought-after pack of conventional cigarettes. Based upon this new suspicion of wrongdoing, the official was permitted to continue his search, notwithstanding that the sought-after pack of cigarettes had already been located and seized. 105 S.Ct. at 745.

By the same token, a reasonable search that reveals evidence that, when viewed in relation to other known facts, leads to a reasonable concern for safety, the teacher or school administrator may continue to search for any item that could endanger the safety of the school official or others. But, in any case, the scope of this new or

expanded search must continue to be reasonably related and limited in scope to its new or modified objective(s).

2.5 Plain View.

During the course of their duties, school authorities may come across an item that they immediately recognize to be evidence of a school rule infraction or of a crime. This may occur during the course of a suspicionless inspection, a suspicion-based search, or during the course of routine interactions with students or while patrolling the hallways or conducting a surveillance. School officials are permitted under the Fourth Amendment to seize these items, which are said to be in "plain view," provided that (1) at the moment the items come into view, the school officials are legitimately present and have not already violated a student's Fourth Amendment rights, and (2) it is immediately apparent to the school officials that they are, in fact, observing evidence of a crime or infraction.

Note that with respect to the first criterion, if school officials have already violated a student's Fourth Amendment rights, the plain view doctrine does not apply, and any evidence observed or seized following the Fourth Amendment violation will be said to be a "fruit" of the unlawful search or seizure and thus subject to the exclusionary rule. Note further that if the object was observed only after school officials had peeked, poked, or pried (i.e., had to open a closed container or rearrange clothing), then the items subsequently observed can only be lawfully seized if school officials had acted appropriately in conducting the peeking, poking, or prying. In other words, school officials must have reasonable grounds to believe that evidence of a school rule infraction or crime will be found before they engage in searching conduct that reveals the object.

Thus, for example, if a school official directs a student to empty his pockets without first having reasonable grounds to believe that the student is carrying evidence of an infraction or offense, any items dutifully revealed by the student would not be said to be in "plain view." Rather, those objects would be said to be a "fruit" of a search that, in this example, would have been unlawfully conducted.

On the other hand, if the student voluntarily and on his or her own initiative chooses to empty his pockets, or unwittingly reveals an object that was concealed in a closed container, that object would be said to be in "plain view," and it could be seized lawfully provided that it is immediately apparent to school officials that the object is contraband or is evidence of a school rule infraction or violation of the criminal law.

With respect to the "immediately apparent" criterion, the police officer or school official must be able to recognize the incriminating character of the evidence without conducting any further peeking, poking, or prying (unless, of course, the officer or official is already permitted to conduct a further peeking, poking, or prying under a separate legal theory). This usually means, in the context of a law enforcement operation, that the police officer has probable cause to believe that the items in plain view are evidence or contraband. *See Arizona v. Hicks,* 480 U.S. 321, 326-328, 107 S.Ct. 1149, 1153-1154, 94 L.Ed.2d 347 (1987). In the context of a discovery by a school officials, it would seem that the school employee need only have reasonable grounds to believe that the items in plain view are contraband or

evidence of a crime or school rule infraction. (Recall that the United States Supreme Court in *T.L.O*. held that school officials need not be concerned with the probable cause standard that applies to searches conducted by police.)

Under the plain view doctrine, ordinarily, the seized evidence would have been discovered "inadvertently." In *Horton v. California,* 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990), the United States Supreme Court noted that "inadvertence" is characteristic of most plain view seizures, although the Court said that inadvertence is not a necessary element or condition. It is not uncommon for school officials to initiate a search looking for a particular type of object or item and, during the course of the search, discover evidence of a completely different and previously unsuspected violation. Thus, for example, school officials may conduct a search of a student's purse looking for cigarettes based upon reasonable grounds to believe that the student had been smoking, and subsequently discover evidence of drug-abuse violations, such as drug paraphernalia or illicit substances. In that event, school officials may lawfully seize the drugs and drug paraphernalia. In fact, that is exactly what happened in *New Jersey v. T.L.O.*.

It is important to note that the "plain view" doctrine applies to any of the human senses, including smell. See § 2.3.6. The plain view doctrine also applies to the sense of touch. In *Minnesota v. Dickerson,* 508 U.S. 366, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993), the United States Supreme Court held that police officers may lawfully seize an object discovered during the course of conducting a lawful "frisk" or "pat down" for weapons if it is immediately apparent to the officers during the course of the protective frisk that the object that they are touching is evidence of a crime. This case has thus established the so-called "plain touch" or "plain feel" doctrine. See also § 2.4.6 for a discussion of searches that involve touching a student's person.

2.6. Consent Searches.

An individual may consent to a search of his or her belongings, thereby waiving Fourth Amendment rights. To be valid, the consent must be knowing and voluntary. Under federal law, knowledge of the right to refuse is not absolutely required, but is merely one of several factors courts will consider in deciding whether the consent was given voluntarily. *See Schneckloth v. Bustamonte,* 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).) As a practical matter, the most reliable way to establish that the person giving consent knew that he or she had the right to refuse is to inform the person of this right. This notice can be given orally, or can be printed on a consent-to-search form.

In addition, ***the better practice might be for the school official to inform the student and/or parent why permission to search is being sought, and what the school official believes will be revealed.*** Thus, for example, if consent is being sought to open a locker because a drug-detection dog has alerted to the locker, it would be advisable to explain to the student and his or her parents that the dog has alerted to the locker. Providing this information, while not necessarily required as a matter of constitutional imperative, will help to demonstrate that the consent is informed or "knowing," to use the phrase often found in the case law. Courts might be especially skeptical of the validity of a consent if

officials refuse to explain to a student or parent why permission to search is being sought in response to a direct question posed by the student or parent.

Because the student or parent has the right to refuse consent, the fact that he or she declines to give consent cannot be used as evidence that the person has "something to hide." A refusal, in other words, cannot be used in any way to establish probable cause or, in the context of a school search, "reasonable grounds" to conduct a warrantless search under the authority of *New Jersey v. T.L.O.*.

2.6.1. Implied Versus Express Consent.

Permission or consent to search can be implied from all the attending circumstances. Thus, for example, permission to search might be inferred from the fact that a student did not object to a search conducted in his or her presence where it would be reasonable to interpret the student's silence or acquiescence as the functional equivalent of consent. (Many literature students may recall Sir Thomas More's eloquent defense at trial in the play "A Man for All Seasons," where More explained that under the law, silence does not betoken objection, but rather assent.) It is nonetheless strongly recommended that permission to search be expressly obtained.

Because a person's consent to search must be clear and unequivocal, a written waiver is the preferred method of obtaining permission to search, although a search will not be invalid merely because the permission was given orally. Police departments have developed consent-to-search forms that are used to memorialize the circumstances under which a suspect has given police permission to conduct a search. Importantly, the printed form establishes a means by which police can show that the person giving consent was accurately advised of the rights that were being waived.

Although not required in a strict constitutional sense, school districts are also encouraged to develop and use their own consent-to-search forms, which are essentially a kind of "permission slip." These forms should clearly spell out a student's rights under the Fourth Amendment. For example, a written form could be used to explain:

- That the student/parent may refuse to give consent, and that there can be no recriminations for doing so;
- That the student may withhold consent until a parent or guardian arrives or can be consulted;
- That the student/parent may limit the scope of the consent search to particular places or things to be searched, and may withhold consent as to particular places and things;
- That the student/parent may terminate consent at any time without having to give a reason for doing so; and,
- That the student/parent can ask to be present during the execution of the search.

2.6.2. Determining the Voluntariness of the Consent.

A valid consent must be given without threat of punishment. (Thus, a student who is told that if he does not comply with a request to empty his pockets he will be disciplined cannot be said to have consented to the search, notwithstanding that he dutifully complies with the request.) The question whether consent was freely and voluntarily given will be

determined from the "totality of the circumstances." *See Schneckloth v. Bustamonte,* 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). ***In determining the validity and voluntariness of a waiver of constitutional rights by a juvenile, courts will consider the student's age, level of education, mental capacity, background, prior experience that the juvenile has had with the juvenile or criminal justice systems, whether the student is distraught or mentally agitated, and whether the student appeared to be under the influence of alcohol or drugs.***

The courts will also examine the nature and circumstances of the request to search, including a consideration of who made the request, whether the request was made in an inherently intimidating or coercive environment, whether the request was made by a number of authority figures, whether coercive tactics were used, whether police officers were present, and whether the student's parents were present. (Parents by their presence are deemed to have a "comforting" impact that will make the encounter less coercive, even where the parents encourage the child to give consent.) As noted above, ***under no circumstances may the official seeking consent threaten a student with punishment if the student refuses to give permission to search, since it is unlawful to punish or draw negative inferences from the exercise of a constitutional right.***

2.6.3. Who Has "Apparent Authority" to Give Consent.

Besides the knowing and voluntariness requirements, a consent search is valid only if the person giving consent has the "apparent authority" over the specific place or thing to be searched. This usually means that consent must be limited to places or objects that are owned or controlled by the person being asked to give consent.

Ordinarily a student would have the apparent authority to give consent to search (1) his or her locker, (2) any containers or objects belonging to the student that are kept in the locker, (3) the student's clothing or any objects or containers that are owned, used, or carry by the student, and (4) a vehicle lawfully operated by the student.

In the event that a student denies ownership of a particular place or object, that student would have no apparent authority to give permission to search that place or object. It should be noted, however, that in such event, the student arguably would enjoy no expectation of privacy in its contents, even if it turns out that the student's denial of ownership was a lie. In those circumstances, a school official could search the object and seize any contraband or other evidence found therein without violating that student's Fourth Amendment rights. *See State v. Moore,* 254 N.J. Super. 295, 299, 603, A.2d 513 (App. Div. 1992). Because a student who denies ownership does not have the authority to give permission to search the container, the search could not be justified under the consent doctrine. Evidence found in the container therefore might be inadmissible at the trial of the property's true owner (if that turns out to be someone other than the student who disclaimed ownership), unless the search is justified under some other principle of law, as would be true if the school official in any event had reasonable grounds to believe that the object contained evidence of a crime or school rule infraction. (Recall that when a school official has reasonable grounds to initiate a search of a particular place, the school official need not bother to

seek permission from the student who owns the container, and may proceed to conduct the search even if the student objects to the search.)

School officials may not give permission to police to search a student's locker, even though the locker is owned by the school and the school district retains an interest in the contents of the lockers. School officials simply do not have the authority to consent to a law enforcement search of a locker in which a student retains a reasonable expectation of privacy; rather, the consent must be given by the student and/or his or her parents. *See Stoner v. California,* 376 U.S. 483, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964).

2.6.4. Terminating Consent.

A student and or parent giving consent may terminate that consent at any time, and the student's (or parent's) request to terminate the search must be scrupulously honored. This means that when the permission to search is withdrawn, the authority to continue searching under the consent doctrine automatically terminates, and the school official must immediately stop searching unless there is some other lawful basis to continue the search. Any evidence discovered after consent is withdrawn will be subject to the exclusionary rule. However, any evidence observed prior to the withdrawal of consent may be seized.

Furthermore, if during the lawful execution of the consent search (i.e., before consent is withdrawn) a school official develops reasonable grounds to believe that evidence of an offense or school rule infraction will be found in the place being searched or any other place, considering the totality of the then-known circumstances (including information first obtained during the course of executing the consent search), then the school official may continue to search under the authority of *New Jersey v. T.L.O.* even after the consent has been withdrawn and over the student's or parent's objections.

Thus, for example, if a consent search reveals a controlled dangerous substance, the school official may continue to search for additional drugs or drug paraphernalia even though the student at this point withdraws permission to search. In effect, a search that begins as a consensual one may quickly develop into a "reasonable grounds" search if incriminating evidence is discovered. (Note that if police officers are involved in the search, the discovery of some drugs or paraphernalia would provide probable cause to believe that a more thorough search for additional contraband would be fruitful, but police must nonetheless stop searching when consent is withdrawn unless a continuation or expansion of the search would fall under one of the recognized exceptions to the warrant requirement.)

Just as school officials or police may not draw a negative inference from a person's refusal to give consent in the first place, so too, school officials and police may not infer from a person's exercise of the right to terminate consent that they were "getting close" to finding contraband.

2.6.5. Limitations in Executing the Consent Search.

As noted throughout this Reference Guide, a search must not only be reasonable at its inception, but also must be conducted in a reasonable manner. Obviously, permission to search a place or container does not mean that police or school officials are

authorized to damage the property to be searched. Furthermore, school officials or police officers acting pursuant to a valid consent are only authorized to search those places or areas where consent to search has been given. The scope of the search, in other words, must be limited to the scope of the consent. Thus, a student and/or parent can give consent to search a locker, but may expressly withhold consent to search a handbag being carried by the student, or even any or all containers located in the locker. (Once again, school officials or police may not draw a negative inference from any such limitation on the permission to search. They may not, in other words, use the refusal to a give consent as to a particular place or object as evidence to establish reasonable grounds or probable cause to believe that the contraband being sought is concealed in the object for which consent to search has been withheld.)

Ordinarily, a person's general consent to search an area impliedly permits a search of all closed containers within that area. *See Florida v. Jimeno,* 500 U.S. 248, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991). Even so, the better practice is to make clear before the search is conducted what places and objects therein may be searched.

If during the course of a valid consent search school officials discover contraband or evidence of a crime or violation of school rules, they may seize that object. Furthermore, the discovery may provide probable cause (in the case of law enforcement searches) or reasonable grounds (in the case of a search conducted by school officials) to conduct a search that goes beyond the scope of the consent that was given initially. (See § 2.5 for a more detailed explanation of the "plain view" doctrine.) Note, however, that where the search is conducted by police officers, they may not continue to search beyond the scope of the consent unless the expanded search is authorized by a warrant or is justified under another one of the judicially-recognized exceptions to the warrant requirement.

2.7. Searches Conducted Prior to Field Trips and School-Sponsored Events

During school field trips and other school-sponsored events, students remain subject to close supervision by school officials. School officials, in other words, continue to be responsible for the welfare and supervision of students at all school-sponsored functions that occur off-campus, without regard to whether those functions or activities take place during regular school operating hours. Accordingly, the same search and seizure rules apply whether the search is conducted on or off school grounds.

Thus, for example, a school official or agent of the school, such as a parent chaperon, must comply with the rules established in *New Jersey v. T.L.O.* before conducting a search based on reasonable grounds to believe that the search would reveal evidence of a crime or a violation of school rules. (Note, however, that if a parent chaperon at an off-site school function conducts a search of the parent's own child, there is no governmental intrusion and the Fourth Amendment does not apply, even if the parent chooses to turn over any contraband or information to school officials for use in a school disciplinary proceeding or a criminal prosecution. Minors enjoy no Fourth Amendment protections with respect to searches conducted by their own parents unless the search was done at the specific request of a police officer or school official.)

Similarly, all of the rules governing "suspicionless" searches (discussed in Chapter 3) apply prior to and during field trips.

2.8. Searches of Vehicles.

One question that sometimes arises is whether school officials may search the contents of a vehicle that is owned or operated by a student and that is parked on school grounds. While there is little caselaw on point, it would seem that an automobile brought on to school property is subject to no greater protection than a student's purse or b and, thus, may be subject to a search conducted by school officials provided, of course, that (1) the facts meet the "reasonable " test announced in *T.L.O.*, or (2) the search is justified as part of a suspicionless inspection program discussed in the following chapter.

The better practice would be to provide advance notice to students that vehicles brought onto school property may be subject to search by school officials when there is a particularized reason to believe that evidence of a crime or violation of school rules would be found in the vehicle. It is especially important to provide such advance notice if any such vehicle searches are to be conducted pursuant to a suspicionless or random inspection program. Providing advance notice to students that vehicles parked on school grounds are subject to search provides students with an opportunity either to keep highly-personal items out of these vehicles or to choose another means of transportation to get to and from school.

Note that schools probably do not have the authority to conduct a non-consensual search of a student-owned or operated vehicle that is not parked on school grounds.

3.0. GENERALIZED OR SUSPICIONLESS SEARCHES

3.1. Introduction and Overview.

Given the serious security and discipline problems that exist in a number of school districts, many education professionals believe that it is appropriate and necessary to conduct routine searches that are not based upon a suspicion that a particular, identified student has committed an offense or violation of the school rules. These suspicionless searches or inspection programs are sometimes referred to as "sweep," "dragnet," or "blanket" searches.

Suspicionless searches are not designed to catch offenders, but rather serve to prevent students from bringing or keeping dangerous weapons, drugs, alcohol, and other prohibited items on school grounds. These inspection programs, in other words, are intended to send a clear message to students that certain types of behavior will not be tolerated.

This portion of the Reference Guide explains the law governing a number of distinct suspicionless inspection programs, including random locker inspections, the use of drug-detection canines, the use of metal detectors, point-of-entry inspections, and random urinalysis drug testing. In most cases, these suspicionless searches are conducted by school officials acting entirely on their own authority, without any assistance or active participation by a law enforcement agency. The notable exception occurs with respect to the use of drug-detection canines that are owned and handled by a law enforcement agency.

This portion of the Reference Guide is intended to offer a number of different options for school officials who desire to implement some form of suspicionless inspection program. Some of these options are likely to be more effective than others in discouraging students from bringing or keeping drugs, alcohol, weapons, and other prohibited on to school grounds.

Certain options are also more efficient in terms of the use of limited personnel resources that may be available to a school district. (Drug-detection canine sweeps, by way of example, require careful planning and interagency cooperation and tend to be conducted on a comparatively infrequent basis.) By the same token, some options pose a greater risk of legal challenge, in part because the state of the law remains unsettled. As a general proposition, the greater the involvement and participation of a law enforcement agency, the greater the likelihood that the law enforcement involvement will trigger stricter rules and subject the entire inspection program to enhanced scrutiny by the courts.

General searches and inspection programs are, by definition, planned events that are designed to respond to serious security and discipline problems. For this reason, school officials who are setting and implementing school search policies will have ample opportunity to read and follow the provisions of this portion of the Reference Guide.

3.2. Model Locker Inspection Program.

This section of the Reference Guide describes in detail how school officials can implement a policy of randomly selecting lockers to be periodically and routinely inspected for items that do not belong on school grounds. Unlike inspection programs that rely on drug-detection canines as a screening device to identify specific lockers to be opened (which is discussed in § 3.3), a random locker inspection program does not involve direct law enforcement participation, other than for a law enforcement agency to provide training to appropriate school personnel so that they will be able to recognize firearms, other dangerous weapons, illicit drugs, evidence of hate crimes, evidence of gang-related activities, or other contraband or prohibited items. (Such training would help to make certain that the program is conducted in a safe and efficient manner. Local law enforcement authorities might, for example, explain what drugs are thought to be most commonly used by adolescents in the jurisdiction, and police can show school officials how these substances are typically packaged and concealed. So too, law enforcement agencies could explain to school officials their legal responsibilities to turn over to police any firearms, illicit drugs or drug paraphernalia, or other evidence of rime that may be discovered during the course of an inspection program that is conducted independently by school authorities. This minimal law enforcement involvement would not transform a subsequently-executed inspection into a law enforcement activity that would be subject to the stricter search and seizure rules governing police agencies.)

Importantly, a random locker inspection program could be conducted far more easily and frequently than a drug-detection canine inspection. Indeed, as outlined below, school officials would have the flexibility to establish a random locker inspection program that involves inspection episodes that occur on a persistent and regular basis. Such a

program could thus be used not only to convince students to remove prohibited items, but also would serve to discourage students from bringing contraband back on to school grounds in the future. (Experience has shown that with respect to drug-detection canine sweeps, students become aware that these operations are only infrequently conducted, so that a student bent on bringing drugs on to school grounds might feel secure in doing so immediately following a canine sweep.)

3.2.1. Findings.

The local board of education, school district superintendent, and/or school principal should adopt and memorialize specific findings that detail the nature, scope, and magnitude of the problem sought to be addressed by the locker inspection. The findings would explain why it is necessary and appropriate to adopt an inspection program.

In *Commonwealth v. Cass,* 709 A.2d 350, 357 (Pa. 1998), the Supreme Court of Pennsylvania recently listed several reasons that justified the school official's "heightened concern" as to drug activity in the school. These factors include:

- information received from unnamed students;
- observations from teachers of suspicious activity by the students, such as passing small packages amongst themselves in the hallways;
- increased use of the student assistance program for counseling students with drug problems;
- calls from concerned parents;
- observation of a growing number of students carrying pagers;
- students in possession of large amounts of money; and,
- increased use of pay phones by students.

The principal in the Pennsylvania case also testified that he had personally observed students exhibiting physical signs of drug use, such as dilated pupils, while in the nurse's office. In *Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646, 115, S.Ct. 2386, 132 L.Ed.2d 576 (1995), the United States Supreme Court referred to several additional factors or circumstances that supported the school district's decision to require student athletes to submit to random urinalysis. These include a marked increase in disciplinary problems and classroom disturbances, more common outbursts of profane language and rude behavior in classes, and direct school staff observations of students using and glamorizing drug and alcohol use. 515 U.S. at ___, 115 S.Ct. at 2388-2389.

3.2.2. Advance Notice of Program.

All students and members of the school community, including parents and legal guardians, should be afforded notice in writing of the nature and purpose of the locker inspection program. In addition to providing parents with written notification, students should be alerted to the program in their homeroom classes and/or in a school assembly.

Providing advance warning is consistent with the true goal of the program, which is not to catch and punish students, but rather to discourage students from bringing or keeping prohibited items on school grounds. The whole point of the exercise, after all, would be lost if the program were kept a secret.

Students and parents should also be advised that any closed containers kept in lockers that are selected for inspection may be opened and their contents examined. Students should thus be warned that if they desire that the contents of closed containers (such as bookbags, purses, or backpacks) be kept private, such containers should not be placed in lockers.

The notice provided to students and parents need not announce the specific details of the neutral inspection plan described below. Rather, it would be sufficient for purposes of the notification requirement to point out that all lockers and containers or objects kept in lockers are subject to inspection, and that the decision on a given occasion to search specific lockers will be determined in a random fashion pursuant to a neutral plan.

3.2.3. Neutral Plan.

Each local board of education, school district superintendent, or building principal should develop a neutral inspection plan that is designed "to assure that the individual's reasonable expectation of privacy is not subject to the discretion of the official in the field." *New Jersey v. T.L.O., supra,* 105 S.Ct. at 743. n.8. This planning approach is similar to the one that police must follow to justify so-called "field sobriety checkpoints." *See Michigan Dep't. of State Police v. Sitz,* 496 U.S. 444 (1990), 110 S.Ct. 2481, 110 L.Ed.2d 412.

A "neutral plan" is one that is based on objective criteria established in advance by appropriate school authorities. These neutral or objective selection criteria are essential to provide the "other safeguards," to use the *T.L.O*. Court's phraseology, that will serve as a substitute for the individualized suspicion that is generally required before school officials may conduct a search. Establishing a neutral plan that reduces the discretion of school officials in selecting students who will be subject to a search also means that there will be less stigma attached to the search, since individuals are not being singled-out based on a particularized suspicion.

Specifically, the plan should be developed by a high-ranking school official, such as a superintendent or building principal. The decision regarding what lockers to open on a given date should not be made on an ad hoc basis by subordinate school officials.

The plan should explain in precise detail how individual lockers or groups of lockers will be selected for inspection, taking into account that it is probably not feasible to open and inspect every locker in the school building every time that an inspection is undertaken. In other words, the plan should balance the need for pervasive inspection against the limitations on available personnel resources and the limited time available to undertake this activity.

It would be preferable, from both a policy and legal perspective, for school officials to use some random drawing method to select lockers or corridors for inspection, or else, where feasible, to inspect all lockers. In fact, courts have noted in the context of police road blocks that the use of fixed checkpoints at which all persons are stopped and questioned creates less concern and anxiety than selective random stops, and also eliminates the potential abusive exercise of discretion. *See Desilets v. Clearview Reg'l Bd. of Educ.,* 265 N.J. Super. 370, 379, 627 A.2d 667 (App. Div. 1993).

In any event, a "lottery" system would satisfactorily circumscribe discretion and thus provide adequate assurances that certain lockers have not been selectively and capriciously targeted for inspection. Random sampling is a statistical technique that ensures that any member of a population has an equal chance of inclusion in a sample for study. A random drawing scheme would ensure that inspections are not used to harass or punish individual students, and that specific lockers have not been targeted or selected on the basis of clearly impermissible criteria, such as race or ethnicity.

Lockers should not be selected for inspection, or be subject to a greater probability of being selected, on the basis of associations (i.e., membership in "gangs" or troublesome groups or cliques). Note in this regard that inspections conducted pursuant to a suspicionless locker inspection program should not be based on individualized suspicion, that is, an articulable suspicion that weapons, drugs, or other prohibited items would be found in a particular locker. Rather, this random inspection program must be kept analytically distinct from the authority of school officials to search specific lockers based upon individualized suspicion of wrongdoing.

Accordingly, in any case where a particularized suspicion exists, the locker believed to contain drugs, weapons, or other contraband or evidence should only be searched in accordance with the legal standards spelled out in *T.L.O*. The random locker inspection program must never be used as a ruse or subterfuge to open a locker where reasonable grounds to search that locker exist or, worse still, where a school official suspects the presence of drugs or weapons in a particular locker, but believes that there are insufficient grounds to conduct a lawful search in accordance with the rule established in *T.L.O*. Needless to say, school officials must never tamper with the random selection process or criteria established in the plan.

3.2.4. Execution.

All persons conducting the inspections should be thoroughly familiar with the neutral plan and must stick to it. Thus, for example, inspections should only be conducted with respect to those lockers that have been selected for opening in accordance with the selection criteria and method established in the plan.

The inspections should be conducted in a manner that minimizes the degree of intrusiveness. Inspections should be limited to looking for items that do not belong on school property or in a locker. Personal possessions should not be damaged, and school officials conducing the inspections should not read personal notes or entries in diaries or journals.

School officials would be authorized and permitted to open and inspect any closed containers or objects that are stored in a locker that has been selected and opened pursuant to the neutral plan. It would make no sense, after all, to permit school authorities to inspect the contents of a locker, but prohibit them from inspecting the contents of a bag stored in a locker and in which drugs, weapons, or other prohibited items could easily be concealed. As noted in § 3.2.2, providing students and parents with notice of the intention to implement a locker inspection program, school authorities should clearly announce that closed containers that are kept in lockers will be subject to inspection.

Law enforcement officers should not participate in the conduct of these inspections and should not even be present or "standing by" in the corridor. Under no circumstances should a law enforcement officer direct a school to undertake a locker inspection program or a specific inspection episode. Rather, it is critically important that any and all such inspections be conducted independently from law enforcement authorities, based solely upon the authority of school officials to take steps to preserve discipline, order, and security in the school.

Drug-Detection Canines.

3.3.1. Overview.

In many school districts throughout the nation, school administrators have invited law enforcement agencies to bring drug-detection canines into schools to ferret out controlled substances that may be stored in lockers.

Because drug-detection canines are usually used to conduct a schoolwide inspection or "sweep," such programs are often thought of as a form of "general" or "suspicionless" search, distinct from the kind of searches governed by *New Jersey v. T.L.O.*, which dealt with searches conducted by school officials that focus on a particular location based upon a pre-existing suspicion that evidence of a violation of law or school rules would be found at that particular location. It is more precise, however, to say that the use of a drug-detection dog represents a hybrid form of search; the legal nature of this governmental conduct (and hence the applicable legal standard) will usually change during the course of the inspection episode. At the outset, the schoolwide canine inspection or "sweep" falls neatly within the definition of a general or suspicionless search and, under federal law, this conduct need not be justified under the *T.L.O*. reasonable grounds test, much less the stricter probable cause standard. Once a drug-detection dog alerts to the presence of controlled dangerous substances, however, the ensuing act of opening the locker in response to the dog's alert clearly constitutes a particularized, suspicion-based "search" for purposes of Fourth Amendment analysis.

The effectiveness of the use of drug-detection canines in schools will depend upon a number of factors, including, notably, how often school lockers are subjected to this type of inspection. The use of scent dogs on infrequent, isolated occasions may not be enough to convince students that school authorities are willing to undertake routine and persistent efforts to find concealed substances that pose a danger to the school community. School authorities should also carefully consider the possibility that a well-publicized inspection by a scent dog may fail to undercover drugs that are, in fact, secreted in lockers. (This is sometimes referred to as a "false negative" result.) The unintended effect can be to embolden student drug users and dealers by leading them to believe that they can "beat the system," and that they face only a comparatively small risk of being caught.

For all of these reasons, school officials should not view drug-detection canines as a panacea or a "quick fix." Indeed, in Vernonia Sch. Dist. 47J v. Acton, the United States Supreme Court noted that school officials in that troubled district had "even brought in a specially trained dog to detect drugs, but the drug problem persisted." 515 U.S. 646, ___, 115 S.Ct. 2386, 2389, 132 L.Ed.2d 564, ___ (1995).

The inability of the use of drug-detection canines to stem the tide of drug abuse prompted school officials in that district to resort to random drug testing. Given the inherent limits on the effectiveness of a scent dog program, the better policy and practice is to use periodic canine searches to supplement, not to supplant, other methods and procedures available to school officials to discourage students from bringing and keeping drugs and prohibited weapons on school grounds.

3.3.2. An Examination by a Scent Dog is Not a "Search."

In *United States v. Place,* 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983), the United States Supreme Court held that the use of a law enforcement drug-detector dog to sniff the exterior surface of a container is, at most, a "minimally intrusive" act — one that does not constitute a "search" for purposes of the Fourth Amendment. The Court concluded that the act of subjecting property to inspection by a law enforcement-handled canine simply cannot reveal anything private about the contents of the object being sniffed. The dogs, in other words, are trained only to alert to selected controlled dangerous substances (or explosives residue) and, therefore, will not react to non-contraband items that might be of a highly private or personal nature.

The United States Supreme Court's decision in Place does not mean that the use of drug-detection dogs is permissible in all circumstances. The Court held only that, "the particular course of investigation that the agents intended to pursue here — exposure of respondent's luggage, which was located in a public place, to a trained canine — did not constitute an internal search within the meaning of the Fourth Amendment." The act of opening the locker or entering any part of a locker, vehicle, or container, whether in response to a dog's alert or to provide the dog access to a location to facilitate its examination, would constitute a "search" for purposes of the Constitution and this Reference Guide. (An act by the dog of "poking" or "prying" goes beyond mere sniffing, and falls within the definition of the term "search," as used in this Reference Guide.) It bears repeating at this point that all searches made by law enforcement officers must be conducted pursuant to a warrant issued by a judge unless the search implicates one of the narrowly-drawn and jealously-guarded exceptions to the warrant requirement, such as "consent," "exigent circumstances," or the so-called "automobile exception."

3.3.3. Does a Scent Dog Alert Constitute Probable Cause (For Police) or Reasonable Grounds (For School Officials) to Conduct a Search?

Most of the courts that have addressed the issue have ruled that a positive alert by a well-trained drug-detection dog constitutes probable cause to believe that illicit substances or explosives are present. In *Doe v. Renfrow,* 475 F.Supp.1012 (N.D. Ind. 1979) *aff'd in part* 631 F.2nd at 91 (7th Cir. 1980), *cert. den.* 451 U.S. 1022, 101 S.Ct. 3015, 69 L.Ed.2d 395 (1981), for example, the court concluded that a scent dog's alert established probable cause to believe that a student was carrying drugs, although as it turned out, the student was not carrying drugs and the dog had apparently alerted because the student had recently handled another dog in estrus.

One respected Fourth Amendment expert has concluded that, "in light of the careful training which these dogs receive, an

'alert' by a dog is deemed to constitute probable cause for an arrest or search if a sufficient showing is made as to the reliability of the particular dog used in detecting the presence of a particular type of contraband." *1 LaFave, Wayne R., "Search & Seizure: A Treatise on the Fourth Amendment" (3d ed. 1996) §2.2(f) at* 450. The relevant criteria for determining whether a particular alert constitutes probable cause includes: (1) the exact training the detector dog has received; (2) the standards employed in selecting dogs for detection training; (3) the standards the dog was required to meet to successfully complete its training program, (4) the "track" record of the dog; (5) the dog handler's qualifications; and (6) the circumstances under which the test occurred.

Note that because the "reasonable grounds" standard used to determine the lawfulness of a search conducted by school officials is more flexible and less exacting that the "probable cause" standard used by police, it is even more likely that a positive alert by a scent dog will meet the reasonable grounds test announced in *New Jersey v. T.L.O.*

3.3.4. What To Do When a Scent Dog "Alerts."

In the event that a drug-detection canine alerts to the presence of illicit substances in a locker, the law enforcement handler has several options. It is critical to note that the law enforcement officer or any person acting under the direction or supervision of a police officer is generally not permitted to open the locker in response to a scent dog's alert. Rather, the officer is authorized to do one of the following: (1) apply for a search warrant; (2) initiate further investigation to elicit additional facts indicating that illicit drugs or other contraband are concealed in the locker, or that otherwise corroborate that the student assigned to that locker is engaged in illegal conduct; (3) obtain permission or "consent" from the student and/or one of the student's parents or legal guardians to search the locker; or (4) provide information concerning the dog's alert to the principal of the school so that school authorities, acting independently of law enforcement, can take appropriate action in accordance with *New Jersey v. T.L.O.*

Some of these options rest on firmer legal grounds than others. It is unlikely, for example, that a reviewing court would exclude evidence or impose civil liability in any case where the search (the opening of the locker that the dog alerted to) was conducted pursuant to a warrant issued by another judge. It is less certain whether courts would permit school officials to open a locker under the authority of *New Jersey v. T.L.O.* based upon an alert provided by a law enforcement drug-detection canine, and if that option is to be exercised, special precautions should be taken to make absolutely clear that school officials are acting independently and not as the agents of law enforcement. Given the strong judicial preference for searches conducted pursuant to warrants, it is suggested that when a scent dog alerts to the presence of illicit substances in a locker — thereby providing probable cause to believe that drugs are contained therein — the law enforcement agency conducting the operation should secure the scene and apply for a warrant.

In lieu of applying for a search warrant, law enforcement officers are authorized to obtain a knowing and voluntary consent to open a locker that has been alerted to by a

drug-detection canine. (See discussion in § 2.4.13.) It is critical to note that permission to search a locker cannot be given by a school official, even though the locker is owned by the school.

3.3.5. Using Canines to Examine Student Property Other Than Lockers or Desks.

3.3.5a. Using Canines to Examine Backpacks, Handbags, and Other Portable Containers.

In some jurisdictions, students are ordered to vacate the classroom and to leave their outer garments and backpacks behind. Drug-detection canines are then brought into the room to inspect the student's property. This use of drug-detection canines to sniff handbags, backpacks, and similar articles that students were ordered to leave behind raises a number of additional issues beyond those that arise in scent dog operations that are limited to inspecting lockers. For one thing, the act of ordering students to leave their possessions behind during an operation so that those possessions can be examined by a scent dog would seem to constitute a type of "seizure," which must itself be reasonable under the Fourth Amendment.

In defending this type of inspection program, it is first critical to note that this approach — requiring children to leave their personal possessions in place and to vacate the room — is less intrusive and thus preferable to an operation that permits a drug-detection dog to enter a classroom while students are still present. As noted in the next subsection, a dog handler should not allow a scent canine to come into direct contact with school-aged children, except as part of an assembly or classroom demonstration where the handler is certain that the dog will not attack or frighten children.

Although the act of ordering students to leave their possessions behind constitutes a type of seizure, it must be remembered that not all seizures are unreasonable under the Fourth Amendment. Indeed, a seizure generally represents a less serious intrusion on Fourth Amendment rights than a search. Indeed, the concept of temporarily dispossessing luggage from a passenger and subjecting that luggage to routine examination by means of metal detectors and x-ray machines is universally accepted in the context of airports, where bona fide security concerns are especially pronounced.

The law does not always require that government officials have a particularized suspicion of wrongdoing before a person or vehicle can be seized or ordered to stop. It is well-settled that law enforcement officers may set up sobriety checkpoints where vehicles selected at random are ordered to stop for a brief inspection to determine whether the persons operating these vehicles are driving under the influence of an intoxicating substance or without proper credentials. These temporary detentions or "seizures" are permitted so long as the law enforcement agency has identified a need for the operation; the detention is limited to roads and times where drunk driving is a special problem based upon documented facts; the seizures are done in a safe manner that reduces the risk of injury to motorists an law enforcement officers; and the operation is conducted pursuant to a neutral plan, developed and approved by appropriate superiors, and designed to minimize the discretion of officers in the field. *See Michigan Dept. of State Police v.*

Sitz, 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990).

3.3.5b. Using Canines to Search Persons and Clothing.

It is a regrettable fact of modern day life that some students carry drugs and weapons on their persons from class-to-class throughout the course of the school day. Concealing contraband is especially easy for students who wear multiple layers of baggy or loose-fitting clothing, which has become fashionable in recent years. This fashion trend, ironically, was initiated or at least embraced by gang members who realized that loose-fitting clothing could be used to conceal firearms and other deadly weapons. (This is not to suggest, of course, that all or even a substantial percentage of students who wear oversized clothes are trying to conceal drugs or weapons.)

Despite the severity of the drug and weapons problem facing our schools, it is generally inappropriate to use scent dogs to examine student's persons, including articles of clothing while such clothing is being worn by a student. Scent dogs are often trained to use active or aggressive alert cues or "keys," including scratching, pawing, barking, and growling. Allowing dogs with active alert cues to sniff students poses an unacceptable risk to the safety and well-being of students.

School officials and law enforcement agencies that own and handle drug-detection canines should also be mindful that police dogs, even scent dogs, may evoke painful memories of past governmental overreaching in Europe and the United States. In some communities, the use of police-controlled animals to search or intimidate persons — especially children — will be met by a visceral negative reaction.

The next question that arises is whether school officials are authorized to order children to remove their outer garments and to leave those garments behind so that they can be examined by a drug-detection dog. This conduct would appear to be a "seizure" — the temporary dispossession of the use and enjoyment of personal property. The legality of ordering children to leave behind personal articles is discussed in the preceding section regarding the use of canines to inspect handbags, backpacks, and other portable containers.

School officials should carefully document the reasons that necessitate this type of inspection based on the nature and extent of the drug or firearms problem in the particular school or district. (Note that the scope of the firearms problem will be relevant only to the extent that the canines to be used are trained to alert to the presence of firearms or ammunition.) Any such orders to partially disrobe and to leave clothing behind for examination by a scent dog must be limited to students' outer garments, such as jackets and coats. Under no circumstances should a school require students to remove clothing to a degree or in a manner that would constitute a "strip search" for the purpose of exposing the removed clothing to a suspicionless "sweep" inspection by a drug-detection dog.

In the event that school officials wish to establish a program that requires students to remove outer clothing during the course of a canine inspection, any such order addressed to a student to remove or leave behind outer garments should be done pursuant to a neutral plan. The class or classes subject to this type of inspection should be selected at random, or else all classes (or at least those with children of

an appropriate age given the documented nature of the problem) should be subjected to equal treatment. Individual students within a classroom should not be singled out for this form of inspection. If school officials have reason to suspect that a particular student or group of students is carrying concealed drugs or other contraband, the appropriate response is to conduct an individualized search in accordance with the standards established in *New Jersey v. T.L.O*.

1.4 Metal Detectors.

3.4.1. General Considerations.

In some schools, officials have deemed it necessary to use metal detectors to discourage students from bringing firearms, knives, and other metal weapons on to school grounds. The use of metal detectors is now common in airports, courthouses, and other public buildings across the nation.

There are essentially two distinct types of metal detection equipment: stationary magnetometers that are strategically placed at entrances and through which students or visitors must pass; and portable, hand-held devices or "wands" that can be used to scan student clothing and packages. Often, the two types of detectors are used in conjunction with one another, since each performs a slightly different function, although both types of metal detectors are used as screening devices to determine whether a further physical search is appropriate. The use of metal detectors thus serves to reduce the number of persons who are subject to a physical "search," as that term is used in this Reference Guide. Presumably, those who do not activate a metal detector would not be subject to any further delay or intrusion. Arguably, the use of a magnetometer to scan the outer clothing or a container carried by a student for dense metal does not constitute a "search" within the meaning of the Fourth Amendment precisely because these examinations intrude only slightly on protected privacy interests. As noted above, the United States Supreme Court has ruled that the use of drug-detection canines does not constitute a traditional "search" because canines cannot react to any non-contraband items in which private citizens may have a protected privacy interest. This argument would also seem to apply to metal detectors, although it must be noted that these devices will react to any dense metal, and not just to objects that are weapons or that are otherwise prohibited by law or school rules.

In determining whether to deploy metal detectors, school officials should note that the effectiveness of these devices depends to a large extent on the ability of school officials to maintain security at all entrances to the school building. Because it is often not possible to prevent students who are bent on bringing weapons into the school from using unauthorized (and unprotected) means of access to school buildings, to some extent, the use of stationary metal detectors serves as a symbolic as well as practical response to the problem. It is hardly inappropriate, however, for school officials to send a clear message that they are taking affirmative steps to discourage students from bringing weapons on to school grounds.

3.4.2. Advance Notice.

One of the most important means to minimize the degree of intrusion caused by the use of metal detectors is to provide

advance notice to students and their parents and/or legal guardians. In addition to providing notice to all enrolled students by means of publication in the student handbook, written warning notices should be posted conspicuously at the entrances of the school so as to provide notice to visitors that they will be subject to this form of inspection.

Although enrolled students below a certain age are required by law to attend school and, thus, unlike visitors, do not have the option simply to avoid passing through a metal detector, providing advance notice gives students an opportunity to remove dense metal objects other than weapons that might activate the devices and that, if revealed in a subsequent search, might prove embarrassing, or that might trigger a physical search that would reveal non-metal objects, the discovery of which would prove embarrassing.

3.4.3. Neutral Plan in Selecting Students for Metal Detector Inspection.

Appropriate school authorities should develop a neutral plan that carefully limits the discretion of school employees who operate metal detectors and that provides a very "detailed script" for these employees to follow as they search for weapons. *See People v. Dukes, supra,* 580 N.Y.S.2d at 852.

Although it is best to require all students entering the school to submit to examination by a metal detector, the neutral plan may authorize security personnel or other school employees assigned to a metal detection station to limit the number of students examined by using a random formula. This principle was succinctly described by the court in *People v. Dukes* when it noted that:

> For example, if lines become too long, the [school security] officers may decide to search every second or third student. The officers are prohibited, however, from selecting a particular student to search unless there is a reasonable suspicion to believe that the student is in possession of a weapon. [580 N.Y.S.2d at 851.]

It must be noted that any such method of selection is not really random in a strict mathematical sense, since students are likely to be able to determine the pattern of selection (i.e., searching only every other or every third student in line) and tamper with the selection process. A student carrying a concealed weapon may, for example, be able to manipulate his or her position in line so as to evade the metal detector inspection.

Hand-held metal detectors or "wands" are far more versatile than stationary units. These portable devices can be used in a number of applications, including (1) to conduct initial "sweep" inspections of students and their property as they enter the school building, (2) to verify and focus on the specific location of metal that was detected by a stationary walk-though unit, or (3) to examine the clothing or property of specific students who are suspected to be carrying concealed weapons. However these portable metal detection devices are used, it is important that school officials develop a written policy that guards against the arbitrary exercise of discretion. (As noted above, the best means of protecting against arbitrary discretion is simply to ensure the even-handed application of metal detectors to all students, visitors, and hand luggage entering the school.)

When hand-held metal detectors are used to scan students who are already in the school building (i.e., at locations other than points of entry), care must be taken to ensure that students are not subjected to unreasonable inspections. Even though a metal scan may not constitute a full-blown "search" for Fourth Amendment purposes, it is strongly recommended that individually selected students not be scanned unless school officials have some articulable suspicion that the student being examined may be carrying a weapon.

In determining whether to subject a specific student to a suspicion-based metal detection scan, school officials may consider whether the student is known to be a member of a gang or group that frequently carries or resorts to the use of firearms or other deadly weapons. Membership in a gang, in other words, is a legitimate fact that school officials may consider as part of the totality of the circumstances in determining whether there is a factual basis to conduct a metal detection inspection of a specific student suspected of carrying a weapon. It is less clear, however, whether a student can be subjected to a suspicion-based examination by a metal detector based solely on his or her affiliation with a gang. In any event, metal detectors may never be used to harass or single out students based upon their race on ethnicity.

3.4.4. What To Do When a Device Alerts.

In addition to providing advance notice, there are other steps that school officials should take to minimize the degree of privacy intrusion whenever metal detectors are deployed. For example, if the metal detector is initially activated, the student should be provided with a second opportunity to pass through the device to determine whether there was an error, rather than immediately subjecting the student to a more intrusive form of physical search. Similarly, where feasible, a hand-held metal detector could be used to conduct a more focused inspection to verify and isolate the presence of metal that was detected by a walk-though magnetometer. This technique might show, for example, that the walk-through device alerted to the student's belt buckle, thus obviating the need to conduct a search of the student's person or belongings. The hand-held devices use changing audible signals that can be interpreted by the operator, in contrast to the stationary metal detectors that essentially provide only a positive or negative reaction to the presence of metal objects.

Similarly, procedures should be in place so that the contents of student's hand luggage can be examined separately from the student's person or clothing. This technique will allow school security personnel or hall monitors to identify the object(s) that activated the metal detector's alarm, thus allowing any subsequent search to be limited to those containers. It would be unnecessary and inappropriate to conduct a physical search of a student's person (i.e., clothing) when it is possible to determine by means of a hand-held detector that the metal alerted to by a stationary unit is located in a handbag or backpack being carried by the student.

Most importantly, school officials responding to a metal detection alarm should be instructed to limit any search (i.e., opening of a container carried by the student) to that which is necessary to detect weapons. This minimization can be accomplished in two distinct ways. First, where a hand-held device is used, any

search or "pat down" must begin in the precise area or part of the student's person where the scanning device was activated. *See People v. Dukes, supra,* 580 N.Y.S.2d at 852.

Second, the school official should, where feasible, request the student to indicate what metal object may be causing the alert, and should give the student the opportunity to remove a claimed non-weapon object for visual inspection. This allows the student to minimize the intrusiveness of the search by making it unnecessary for school officials to peer inside or rummage through a backpack or bookbag. (Recall that "peeking," "poking," or "prying" constitutes a full-blown search under the Fourth Amendment.) Once the student has identified and removed the object that may be causing the alarm, he or she should be allowed to proceed a second time through the metal detector to determine whether, in fact, that object was responsible for activating the alarm.

If the student is unable or unwilling to identify or remove the metal object that triggered the alarm, school officials would be authorized to conduct a limited inspection of the student's property, or a limited "pat down" or "frisk" of the student's outer clothing, for the purpose of identifying a potential weapon. As noted above, reasonable efforts should be made to determine whether the metal that caused the alarm is located in a container being carried by the student, as opposed to an object concealed in the student's clothing. Any physical touching of the student should be conducted with a view toward minimizing the degree of intrusion, and ordinarily, the student should first be given the opportunity to remove metal object(s) on his or her person. Conducting a physical "frisk" or "pat down," in other words, should only be used as a means of last resort, and, where a hand-held scanner was used, any physical touching or pat down must be limited to the precise area of the person's clothing where the detector alerted to the presence of dense metal.

School officials must be especially cautious in touching a student's crotch area or female breasts. Unfortunately, firearms and other dangerous weapons may be concealed in these areas precisely because weapons-carrying students know that school officials are generally reluctant to conduct a thorough "frisk" that would entail a tactile probe of the outer clothing that covers these private parts of the human anatomy. To some extent, baggy, oversized trousers became popular with gang members precisely because such clothing makes it easier to conceal weapons. If school officials determine that this is a serious problem in their school building or district, it might be appropriate to invest in hand-held scanners that can be used to determine whether weapons are concealed in the crotch area without having to actually touch a student's clothing. These hand-held detectors will also indicate when it is not necessary to search at all for a weapon concealed in the crotch area.

1.5 Point of Entry/Exit Inspections.

In some school districts, school authorities require students to open their bookbags and knapsacks for cursory inspection by a security officer or other school employee before they are allowed to enter the school building. Sometimes, these suspicionless inspections are conducted in conjunction with the use of metal detectors. In addition, a number of schools require students to open their handbags and knapsacks for inspection before leaving the library or

media center. This is done to discourage students from removing library books and other materials without proper authorization.

Requiring all students to submit to this form of search represents a somewhat greater intrusion on privacy interests than does the use of metal detectors, since this technique permits school officials to look inside closed containers. While more intrusive, this procedure can serve as a useful means to discourage students from bringing drugs and other non-metallic contraband that could not be revealed by a metal detector.

While requiring a student to open a closed container for inspection clearly constitutes a "search" for purposes of the Fourth Amendment, this conduct is permissible provided that school authorities follow certain rules that are designed to minimize the discretion of school employees in determining which students are subject to this form of inspection. In addition, school officials must take certain steps to minimize the degree of intrusion to the greatest extent possible.

One of the most important safeguards is to provide students with advance notice as to when and under what circumstances they will be required to submit to this form of search. Accordingly, school officials should provide all students and their parents and/or legal guardians with written notice prior to the school year that these security procedures will be implemented. In addition, notice should be provided to visitors by means of posting warning signs at points-of-entry to the school where these inspections will be conducted.

The best means of protecting against arbitrary discretion is to ensure the even-handed application of the policy to all students and visitors entering the school. Courts have noted in the context of police roadblocks that the use of fixed checkpoints at which all persons are stopped and questioned creates less concerns and anxiety than selective random stops, and also eliminates the potential abusive exercise of discretion. *See Desilets v. Clearview Reg'l Bd. of Educ.* 265 N.J. Super. 370, 379, 627 A.2d 667 (App. Div. 1993). Furthermore, by subjecting everyone to this form of intrusion, there is no stigma attached to the search. *Id.* at 381.

If for any reason it is not possible to search every student entering the building, or if the lines become too long, school officials may choose to limit the number of students who are searched by using a random formula. For example, school security personnel may decide to search every second or third student. If this is to occur, it must be done in accordance with the neutral plan developed in advance by appropriate school authorities. The plan, in other words, should specify when and under what circumstances school employees assigned to an inspection station are authorized to permit randomly selected students to enter without having to submit to a search. (Note that this method of selection is not really random in a strict mathematical sense since students are likely to be able to determine the pattern of selection (i.e., searching only every other or every third student in line) and thus tamper with the selection process. In this way, a student carrying a weapon or other contraband may be able to manipulate his or her position in line so as to evade a search). See also the discussion in § 3.4.3 concerning a similar drawback with respect to the use of metal detectors.

Under no circumstances may this selection technique or any type of point-of-entry inspection be used by any school employee as a ruse or subterfuge to search students who are suspected to be carrying drugs or weapons. Any such individualized search must be conducted in accordance with the "reasonable grounds" standard established in *New Jersey v. T.L.O.*

1.6 Random Urinalysis Drug Testing.

3.6.1. Overview.

There is probably no subject within the field of search and seizure law that is more controversial than the question whether and under what circumstances school officials may compel large numbers of students to submit to suspicionless or "random" urinalysis. This Reference Guide will not attempt to address every conceivable legal issue that might arise, and school officials who desire to implement a random drug testing policy should consult with the school district's attorney. Nor should this Reference Guide be construed as either endorsing or disapproving random drug testing programs. This discussion, rather, is intended only to provide a whirlwind tour of the legal issues that might arise were a school to adopt such a policy.

The United States Supreme Court has definitively ruled that urine testing is an intrusion on privacy, both during collection of the sample and when the sample is tested. Thus, state-compelled collection and testing of urine constitutes a "search" subject to the demands of the Fourth Amendment. *Skinner v. Railway Labor Executives' Assn.,* 489 U.S. 602, 617, 626-627, 109 S.Ct. 1402, 1413, 1418-1419, 103 L.Ed.2d 639, 665-666 (1989).

Recently, the United States Supreme Court decided a landmark case that explains when and under what circumstances school officials would be permitted under the Fourth Amendment to adopt a policy that requires certain students to submit to random, suspicionless drug testing. *Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995). In that case, the school district in the town of Vernonia, Oregon, adopted a policy that authorized random urinalysis drug testing of students who participate in school athletics programs. The policy applied to all students participating in interscholastic athletics. Students wishing to play sports were required to sign a form consenting to the testing and were also required to obtain the written consent of their parents. Student athletes were tested at the beginning of the season for their sport; in addition, once each week of the season, the names of the athletes were placed in a "pool" from which a student, under the supervision of two adults, would blindly draw the names of 10% of the athletes for random testing. Those randomly selected would be notified and tested that same day, if possible.

The students selected to be tested would complete a "specimen control form" bearing an assigned number. Students taking prescription medications were required to identify the specific medication by providing a copy of the prescription or a doctor's authorization. The student would then enter an empty locker room accompanied by an adult monitor of the same sex. Each boy selected would produce a sample at a urinal, remaining fully clothed with his back to the monitor, who would stand approximately 12 to 15 feet behind the student. Monitors were permitted to watch the student while he produced the sample, and they would listen

for normal sounds of urination. Female athletes would produce samples in an enclosed bathroom stall, so that they could be heard but not observed. After the sample is produced, it would be given to the monitor, who would check it for temperature and tampering and then transfer it to a vial. The samples would then be sent to an independent laboratory, which would routinely test them for amphetamines, cocaine, and marijuana. Other drugs, such as LSD, might be screened at the request of the school district.

The United States Supreme Court accepted the finding that the laboratory's procedures are 99.94% accurate. The school district followed strict procedures regarding the "chain of custody" of the urine samples and access to test results. The laboratory, for example, would not know the identity of the students whose samples it tests. The laboratory was authorized to mail written test results only to the superintendent and to provide test results to school district personnel by telephone only after the requesting official recites a code confirming his or her authority. Only the superintendent, principals, vice-principals, and athletic directors had access to test results, and the results were not kept for more than one year.

If a sample tested positive, a second test would be administered as soon as possible to confirm the result. If the second test was negative, no further action would be taken. If the second test was positive, the athlete's parents would be notified, and the school principal would convene a meeting with the student and his or her parents, at which time the student would be given the option of (1) participating for six weeks in an assistance program that includes weekly urinalysis, or (2) suffering suspension from athletics for the remainder of the current season and the next athletic season. The student would then be retested prior to the start of the next athletic season for which he or she is eligible. The policy also provided that a second offense would result in automatic imposition of option #2; a third offense would result in suspension of the remainder of the current season and the next two athletic seasons.

In upholding the constitutionality of this policy by a 6-3 margin, the United States Supreme Court began its analysis by observing that the ultimate measure of the constitutionality of a governmental search is "reasonableness." The question whether a particular search meets the reasonableness standard, in turn, "is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." 115 S.Ct. at 2390. The Court recognized that searches unsupported by probable cause can be constitutional "when special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impractical." *Id.* at 2391. The Court in *Vernonia* recognized that it had previously determined that such "special needs" exist in the public schools, citing to *New Jersey v. T.L.O.*.

The Supreme Court then considered the nature of the privacy interests upon which the search intrudes, recognizing that the Fourth Amendment does not protect all subjective expectations of privacy, but only those that society recognizes as legitimate. "Central, in our view, to the present case is the fact that the subjects of the Policy are (1) children, who (2) have been committed to the temporary custody of the State as schoolmaster." *Id.* at 2391. The Court further explained that

particularly with regard to medical examinations and procedures, "students within the school environment have a lesser expectation of privacy than members of the population generally." *Id.* at 2392. Legitimate privacy expectations, the Court reasoned, are even less with regard to student athletes. "School sports," the Court found, "are not for the bashful," and "public school locker rooms, the usual sites for these activities, are not notable for the privacy they afford." *Id. at* 2392-2393.

The Court also found that school athletes enjoy reduced expectations of privacy since, "[b]y choosing to 'go out for the team,' they voluntarily subject themselves to a degree of regulation even higher than that imposed on students generally," since the school district had long maintained a policy that athletes must submit to a pre-season physical exam. *Id. at 2393*. For all of these reasons, the Court concluded that the privacy interests compromised by the process of obtaining the urine sample are "negligible." *Id.*

The Court then considered the other aspect of privacy invasion associated with urinalysis, that is, the disclosure of information concerning the state of the subject's body and the materials that he or she has ingested. The Court found it significant that the tests at issue looked only for drugs, and not for whether the student is, for example, epileptic, pregnant, or diabetic. *Id.* at 2393. Moreover, the drugs for which the samples were screened are standard and did not vary according to the identity of the student.

Finally, and of great importance, the Court noted that the results of the tests are disclosed only to a limited class of school personnel who have a need to know, and are not turned over to law enforcement authorities or used for any internal disciplinary function. *Id.* at 2393. This led the Court to conclude that these searches are undertaken for prophylactic and distinctly nonpunative purposes, thus clearly distinguishing these searches from so-called evidentiary" searches. *Id. at* 2393, n.2.

The Supreme Court concluded its Fourth Amendment analysis by turning to a discussion of the nature and immediacy of the governmental concern at issue and the efficacy of the means chosen by the school district to meet it. The Court concluded that it "can hardly be doubted" that the nature of the concern, deterring drug use by our nation's schoolchildren, "is important — perhaps compelling ... ." *Id.* at 2395. The Court found that:

> School years are the time when the physical, psychological, and addictive effects of drugs are most severe ... and of course the effects of a drug-infested school are visited not just upon the users, but upon the entire student body and faculty, as the educational process is disrupted. In the present case, moreover, the necessity for the State to act is magnified by the fact that this evil is being visited not just upon individuals at large, but upon children for whom it has undertaken a special responsibility of care and direction. *Id.* at 2395.]

The Court also emphasized that the urinalysis program at issue in that case was directed narrowly to drug use by school athletes, "where the risk of immediate physical harm to the drug user and those with whom he is playing his sport is particularly high." *Id*.

As to the effectiveness of this means for addressing the problem, the Court stated that, "it seems to us self-evident that a drug problem largely fueled by the 'role model' effect of athletes' drug use, and of particular danger to athletes, is effectively addressed by making sure that athletes do not use drugs." *Id.* at 2396. The majority of the Court at this point expressly rejected the respondent's argument that a "less intrusive" means to the same end was available, namely, "drug testing on suspicion of drug use." *Id.* at 2396. In fact, the Court concluded that, "[i]n many respects we think, testing based on 'suspicion' of drug use would not be better, but worse." *Id*.

Taking into account all of these factors — the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search — the United States Supreme Court concluded that the school district's policy was reasonable and hence constitutional. The Court nonetheless took pains to:

> caution against the assumption that suspicionless drug testing will readily pass constitutional muster in other contexts. The most significant element in this case is the first we discussed: that the Policy was undertaken in furtherance of the government's responsibilities, under a public school system, as guardian and tutor of children entrusted to its care. [*Id*. *at 2396*.]

3.6.2. Factual Basis Justifying a Random Drug Testing Program.

In *Vernonia*, the United States Supreme Court briefly recounted the facts that were found at trial, beginning with an observation that in that Oregon school district, "as elsewhere in small town America, school sports play a prominent role in the town's life, and student athletes are admired in their schools and in the community." 115 S.Ct. at 2388.

According to the Court, teachers and administrators in the mid-to-late 1980's observed a sharp increase in drug use. Students in the Vernonia school district began to speak out about their attraction to the drug culture and to boast that there was nothing that the school could do about it. Along with more drugs came more disciplinary problems. The Court observed that between 1988-1989, the number of disciplinary referrals in Vernonia schools rose to more than twice the number reported in the early 1980s, and several students were suspended. The trial court had also found that students during this period became increasingly rude during class, and outbursts of profane language became common. Id.

Initially, the school district responded to the drug problem by offering special classes, speakers, and presentations designed to deter drug use, and the school district even resorted to the use of a drug-detection canine. Id. According to the findings of the trial court:

> The administration was at its wit's end and ... a large segment of the student body, particularly those involved in interscholastic athletics, was in a state of rebellion. Disciplinary problems had reached "epidemic proportions." The coincidence of an almost three-fold increase in classroom disruptions and disciplinary reports along with the staff's direct observations of students using drugs or glamorizing drug and alcohol use led the administration to the inescapable conclusion that the

> rebellion was being fueled by alcohol and drug abuse as well as the student's misconceptions about the drug culture.[115 S.Ct. at 2389.]

At that point, school district officials held a parent "input" night to discuss a proposed student athlete drug policy, and the parents in attendance gave their unanimous approval. *Id*.

It is by no means certain, indeed doubtful, that a random drug testing policy could only survive constitutional scrutiny based upon a finding that a large segment of the student population is in a "state of rebellion." In other contexts where courts have sustained the constitutionality of suspicionless searches, courts have recognized that the goal of providing safe, drug-free schools is often impeded by the behavior of only a few students. *See e.g., Commonwealth v. Cass,* 709 A.2d 350, 364 (Pa. 1998). *See also Desilets v. Clearview Reg'l Bd. of Educ.* 265 N.J. Super. 370, 379, 627 A.2d 667 (App. Div. 1993) (court rejected the argument that the rare incidence of detection of contraband as a result of the school's policy of searching all hand luggage brought on class trips indicated that there was no problem at that particular middle school serious enough to justify these suspicionless searches).

Furthermore, the United States Supreme Court has repeatedly used the "special needs" test to sustain random drug testing policies involving highly-regulated professional and safety-sensitive jobs where there was no evidence that actual drug use by, for example, Customs Service agents or railway workers had reached significant much less epidemic levels. *See e.g., Skinner v. Railway Labor Executives' Assn.,* 489 U.S. 602, 109 S.Ct. 1384, 104 L.Ed.2d 685 (1989)*; Nat'l Treasury Employees Union v. Von Raab,* 489 U.S. 656, 109 S.Ct. 1395, 103 L.Ed.2d 685 (1985). In fact, the government in *Von Raab* did not even claim that the testing program was a response to a demonstrated drug problem within the Customs Service.

As a general proposition, there is no minimum number of acts of violence, vandalism, disorder, or substance abuse that must occur before a school can lawfully adopt a particular search policy. Indeed, the United States Supreme Court in the *Vernonia* opinion itself emphasized that:

> It is a mistake ... to think that the phrase "compelling state interest" in the Fourth Amendment context, describes a fixed, minimum quantum of governmental concerns ... . Rather, the phrase describes an interest which appears important enough to justify that particular search at hand, in light of other factors which show the search to be relatively intrusive upon genuine expectation of privacy. Whether that relatively high degree of government concern is necessary in this case or not, we think it is met. [515 U.S. at ___, 115 S.Ct. at 2394, 2395 *(italics in original).]*

Clearly, no region, town, school district, or school building in America is immune from the influence of drug trafficking and substance abuse. While the precise nature and extent of the problem varies geographically and over time, a reviewing court should not declare a drug testing policy unconstitutional merely because school officials choose not to describe the problem with imprecise hyperbolism, such as by characterizing the student body as being "in a state of rebellion," or by describing the drug and disciplinary

problem as one of "epidemic proportions." The inquiry, rather, should focus on measurable (if not quantifiable) facts. How relevant is substance abuse, and how has that changed over time? To what extent has the increased use and availability of controlled dangerous substances affected student behavior, student performance (academic and otherwise), and student safety (including an assessment of students' perceptions of the dangers they face while in school)? Has there been an increase in the incidence of violence, vandalism, classroom disruptions, suspensions, and expulsions, and is there reason to believe that any such increase in disciplinary problems is related to the abuse and/or sale of illicit drugs and alcohol?

The real question may turn out to be who is in the best position to decide whether drug-related disciplinary problems have reached the point where random drug testing is a reasonable response. Phrased somewhat differently, the outcome of these cases may well depend on the extent to which reviewing courts will defer to the judgment of school officials in determining whether the school's substance abuse problem is such as to justify the decision to resort to random drug testing. Obviously, courts will not and must not abdicate their responsibility to conduct their own balancing test, or what is described in the case law as a thorough "context-specific inquiry." It nonetheless bears noting that the Supreme Court in *Vernonia* seemed to be especially impressed by the fact that the school officials in that case implemented the drug testing policy only after soliciting input from parents. The Court re-emphasized at the end of its discourse that:

> We may note that the primary guardians of Vernonia's schoolchildren appear to agree [that the drug testing policy is reasonable]. The record shows no objection to this district wide program by any parents other than the couple before us here— even though, as we have described, a public meeting was held to obtain parents' views. We find insufficient basis to contradict the judgment of *Vernonia's* parents, its local school board and the District Court, as to what was reasonably in the interest of these children under the circumstances. [115 S.Ct. at 2397.]

In any event, school officials seeking to adopt a random drug testing policy should be prepared to develop a complete factual record to support their policy decision. Furthermore, school officials should be careful to document the nature and scope of the substance abuse and disciplinary problem in each specific school, grade level, or subpopulation of students that would be affected by the proposed drug testing policy. In her dissenting opinion in *Vernonia*, Justice O'Connor, who was joined by Justices Stevens and Souter, expressed concern in this regard that there was virtually no evidence in the record of a drug problem at the "grade school" at which the petitioner attended when the litigation began. Rather, the witnesses who testified at trial to drug-related incidents were mostly teachers or coaches at the high school. 115 S.Ct. at 2406 (O'Connor, J., dissenting). As Justice O'Connor noted, "[p]erhaps there is a problem at the grade school, but one would not know it from this record." *Id*.

The United States Supreme Court in *Vernonia* specifically referred to certain kinds of facts and circumstances that would be relevant, including a marked increase in disciplinary problems and classroom disturbances, more common outbursts of profane language and rude

behavior in classes, student athletes in a state of near rebellion, and direct school staff observations of students using and "glamorizing" drug and alcohol use. Other court decisions involving other types of suspicionless search programs may also provide guidance in identifying the kinds of facts and observations that should be made part of the record. In *Commonwealth v. Cass,* 709 A.2d 350, 357 (Pa. 1998), for example, the Supreme Court of Pennsylvania recently listed several reasons that supported school officials' "heightened concern" as to drug activity in the school that justified the use of drug-detection canines. These factors include:

- information received from unnamed students;
- observations from teachers of suspicious activity by the students, such as passing small packages amongst themselves in the hallways;
- increased use of the student assistance program for counseling students with drug problems;
- calls from concerned parents;
- observation of a growing number of students carrying pagers;
- students in possession of large amount of money; and,
- increased use of pay phones by students.

School officials interested in pursuing the option of implementing a random drug testing program might also want to commission a confidential survey of students to gauge with some measure of empirical precision the prevalence of student drug use and the nature of students' attitudes concerning the use of alcohol and other drugs.

3.6.3. Scope of the Student Population Subject to Drug Testing.

The school drug testing policy at issue in *Vernonia* applied only to students participating in interscholastic athletics. It is thus not yet clear whether a school would be permitted to adopt a more wide-ranging program that would, for example, require students engaged in non-athletic extracurricular activities, or even the entire student body, to submit to random urinalysis. The Court in *Vernonia* cautioned "against the assumption that suspicionless drug testing will readily pass constitutional muster in other contexts," 115 S.Ct. at 2396, although it would appear that this warning was addressed mostly to those who might broadly interpret the case to permit random drug testing outside of the school context. Indeed, the Court observed in the very next sentence that, "[t]he most significant element in this case is the first we discussed: that the Policy was undertaken in furtherance of the government's responsibilities under a public school system, as guardian and tutor of children entrusted to its care." *Id.* at 2396.

One of the members of the Court who joined in the majority decision, Justice Ginsburg, wrote separately to explain that:

> I comprehend the Court's opinion as reserving the question whether the District, on no more than the showing made here, constitutionally could impose routine drug testing not only on those seeking to engage with others in team sports, but on all students required to attend school. [115 S.Ct. at 2397 *(Ginsburg, J.*, concurring).]

Although Justice Ginsburg's concurring opinion technically means only that the court has reserved decision on the constitutionality of any more wide-ranging school urinalysis policy, the strong implication is that she would not join a majority to uphold a broader program, or at least one that applies to the entire student body.

Furthermore, a close reading of the majority decision indicates, as noted by Justice Ginsburg in her concurring opinion, that the constitutionality of the *Vernonia* school district's drug testing policy depended at least to some extent on the Court's findings that (1) there is a reduced privacy expectation and closer school regulation of student athletes, 115 S.Ct. at 2389, 2392-2393, and (2) that drug use by athletes risks immediate physical harm to users and those with whom they play. *Id.* at 2394-2395. The Court also noted that given the limited population that was subject to drug testing, the most severe sanction allowed under the school policy was suspension from extracurricular athletic programs. *Id.* at 2390. This led the Court to characterize the policy not only as being "nonpunitive," but also as not one that is not being used "for an internal disciplinary function." *Id.* at 2393.

At least one federal appellate court has sustained the constitutionality of a somewhat more expansive school drug testing program that applied to students engaged in nonathletic extracurricular activities. The United States Court of Appeals for the 7th Circuit ruled in *Todd v. Rush County School,* 133 F.3d 984 (7th Cir. 1998), *cert. den.* 119 S.Ct. 68 (1998), that the reasoning set forth in *Vernonia* also applies to testing of students involved in any extracurricular activity. The court noted that, "certainly successful extracurricular activities require healthy students." The court also agreed with the finding of the district court judge that extracurricular activities, like athletics, "are a privilege at the high school," and added that students engaged in extracurricular activities, "like athletes, can take leadership roles in the school community and serve as an example to others."

In affirming the constitutionality of the Rushville, Indiana drug testing policy, the Court of Appeals concluded that the policy was undertaken in furtherance of the school district's responsibilities as a guardian and tutor of children entrusted to its care and that the "lynchpin of [the] program" is to protect the health of the student's involved. The court thus concluded that the Rush County School's drug testing program, while broader than the one upheld in *Vernonia*, is "sufficiently similar to the programs in *Vernonia* ... to pass muster under the Fourth and Fourteenth Amendments."

It is less likely that a school would be permitted to compel drug testing of all students, and, in fact, to this point, it appears that no court has permitted such a widespread policy. It is true that the Court in *Vernonia*, citing to *New Jersey v. T.L.O.*, recognized that all students within the school environment, not just athletes, have a lesser expectation of privacy than members of the population generally, "particularly with regard to medical examinations and procedures ... ." 115 S.Ct. at 2392. So too, the Court clearly stated that the "most significant element in this case" is that the drug testing policy was undertaken in furtherance of the government's responsibilities as guardian and tutor of children entrusted to its case,

Id, at 2396, and that, "[c]entral, in our view, to the present case is that the subjects of the Policy are (1) children, who (2) have been committed to the temporary custody of the State as schoolmaster." *Id.* at 2391. The Court's emphasis on this point suggests that the school's responsibilities, and thus the scope of its authority, extends to all pupils, and not just to athletes and students who participate in extracurricular activities.

Even so, there would seem to be insuperable practical as well as legal difficulties in implementing a school wide drug testing policy, including, most notably, the problem of fashioning an appropriate response or remedy in the event of a confirmed positive drug test. It is one thing to exclude a substance-abusing student from a sports team, orchestra, band, or club. It is another thing entirely to exclude the student from attending regular classes. A suspension from regular classes would seem to cross the line into the realm of an "internal disciplinary function," 115 S.Ct. at 2393, although it is more likely that a court would tolerate such a program if it were used solely to place students who test positive in an appropriate treatment or counseling program.

3.6.4. Special Rules and Procedures Governing Random Drug Testing Programs.

Because the use of random drug testing represents an aggressive, dramatic, and controversial tactic, school officials considering this technique should take special precautions to ensure that drug testing policies are developed and implemented in accordance with the principles and safeguards outlined in Vernonia. Many of these procedures and special precautions are discussed in the preceding sections of this section. It is appropriate, however, to restate some of these principles succinctly.

3.6.4a. Soliciting Parental Input.

School officials are strongly encouraged to solicit input from parents, teachers, and other members of the school community before conducting a canine operation. *See Vernonia, supra,* 115 S.Ct. at 2395, 2397. Even if not constitutionally required, it is a good idea to meet with parents and afford them meaningful input in the decision to resort to the use of drug testing, since this provides education officials with an excellent opportunity to discuss with parents and other members of the school community the scope and nature of the school's drug problem and the need for a comprehensive response that goes far beyond relying on random urinalysis. Convening a parent "input" night not only provides school officials with an opportunity to solicit the opinions of the "primary guardians" of the district's schoolchildren, *Iid.* at 2397, but also affords an opportunity to engage in a fact-finding inquiry and to learn firsthand from parents their views concerning the scope and nature of the school's substance abuse problem.

3.6.4b. Findings.

School officials should carefully document their findings to demonstrate why it is necessary and appropriate to implement a drug testing policy. These findings should spell out the nature and scope of the problem that exists in the school and why the proposed policy will help to alleviate the problem. It is also critical that the findings relate specifically to the particular school and population of students who will be subject to random drug testing.

3.6.4c. Limited Purpose.

A school drug testing policy must be designed to deter substance abuse and not to catch and punish users. The policy must be undertaken for prophylactic and distinctly nonpunative purposes (i.e., protecting student athletes from injury and deterring drug use in the student population). The policy must make clear that positive test results will not be disclosed to law enforcement agencies. School officials should carefully consider whether there are less restrictive or intrusive alternatives to accomplish their legitimate objective, which is to discourage students from using alcohol or other drugs.

3.6.4d. Minimize the Invasiveness of the Intrusion.

A random drug testing policy must specify the procedures for collecting and handling urine samples, so as to minimize to the greatest extent possible the invasion of student privacy. The conditions under which samples are taken must be "nearly identical to those typically encountered in public restrooms." *Vernonia, supra,* 115 S.Ct. at 2393.

3.6.4e. Neutral Plan for Selecting Students to be Tested.

The policy must establish a neutral plan that clearly prescribes the random selection method that will ensure that students selected to submit to urinalysis are not singled out on the basis of an individualized suspicion, or on the basis of some impermissible criteria, such as race, ethnicity, socioeconomic status, or membership in a "gang." (Note that where school officials have reason to believe that a particular student or group of students may be using or under the influence of an intoxicating substance, they must comply with the "reasonable grounds" test established in *New Jersey v. T.L.O.*) The random drug testing program must never be used as a ruse or subterfuge to compel a student to submit to drug testing where a school official suspects that particular student may have used or is under the influence of an intoxicating substance.

3.6.4f. Preserving the Chain of Custody and Ensuring the Accuracy of Drug Test Results.

The policy must specify the procedures to preserve the so-called "chain of custody" of all samples that are taken, and must also include procedures, such as those described in the *Vernonia* case, to ensure reliable drug test results.

3.6.4g. Preserving Confidentiality.

It is critically important that the policy include provisions to make certain that the identity of students who test positive for drugs are kept confidential. Test results may not be disclosed to law enforcement authorities.

In the circumstances, a school drug testing policy should include clear procedures to ensure the confidentiality of information provided by students concerning their lawful use of prescription substances, and schools would be well-advised to adopt a policy similar to the one described in *Von Raab*, whereby (1) students would not be required to disclose medical information unless they test positive, and (2) such information would be supplied only to a licensed medical professional rather than to school officials.

3.6.4h. Prescription Medication.

The student in the *Vernonia* case argued that the school district's drug testing policy was unduly intrusive because it required that students, if they were to avoid sanctions for a falsely positive test, identify in advance any prescription medications that they were taking. The Supreme Court agreed that this "raises some cause for concern," 115 S.Ct. at 2394. In an earlier case involving the random drug testing of Federal Customs Service employees, the Court "flagged as one of the salutary features of [that] program the fact that employees were not required to disclose medical information unless they tested positive, and even then, the information was supplied to a licensed physician rather than to the government employer." 115 S.Ct. at 2394, *referring to Treasury Employees v. Von Raab,* 489 U.S. 656, 672-673, n.2, 109 S.Ct. 1384, 1394-1395, n.2., 103 L.Ed.2d 685 (1989). It was not clear from the record in *Vernonia* whether the school district would have permitted students to provide the requested information concerning prescription medication in a confidential manner, and the Court refused to "assume the worst." 115 S.Ct. at 2394.

APPENDIX B

GUIDELINES CONCERNING STUDENT SEARCHES IN THE PUBLIC SCHOOLS

GUIDELINES CONCERNING STUDENT SEARCHES IN THE PUBLIC SCHOOLS

SECTION 1. STUDENT SEARCHES AND FOURTH AMENDMENT PROTECTION

§1.1 Emerging Educational Roles

Since the 1980s increasing community concern regarding student drug use and campus violence has resulted in a heightened awareness of the public school's responsibility to maintain the sanctity of the school and the school yard. At no time in history has the need for a safe learning environment been a higher community priority. Reflecting this priority, recent court decisions have expanded the powers of public school authorities to limit student expectations of privacy thus demonstrating a decided trend towards supporting the decisions of public school officials whenever possible.[1] Efforts to ensure that public schools are safe have led to an intensified level of administrative concern for student safety.

Public school administrators, while not in the business of law enforcement, are nonetheless agents of the larger community and are, therefore, charged with maintaining order within the school community. *New Jersey v. T.L.O.* reiterated the principle that today's public school officials act to achieve publicly mandated educational and disciplinary policies.[2] Courts have emphasized that the power of public schools permits a higher degree of control and supervision over students than generally could be exercised over adults. Thus, while children do not shed their constitutional rights at the school house gate the nature of those rights is balanced against what is appropriate for children in the school setting.[3]

With the emergence of significant national and state support for school reform and improved student achievement, it is more important than ever before for schools to assume responsibility for the daily learning environment. School authorities must achieve a balance between the privacy rights of the individual and the right of the school community to a safe learning environment. This balance can be maintained by school district policy and practice.

Carefully written and appropriately executed school policy that advances a safe learning environment is an intrinsic component of today's school management practice. Such policy and practice respects each student's rights within the public school setting as required by the Fourth Amendment to the United States Constitution. Local school boards of education have a responsibility to develop school policy that meets the Fourth Amendment standard. It is the best practice for the policy to be written, authorized, specific, published, and disseminated.[4]

---

[1] Law Advisory Group, Inc., Safety, Order, and Discipline in American Schools (Cleveland, Ohio: Law Advisory Group, Inc., 1998-99) 112.

[2] *New Jersey v. T.L.O.,* 469 U.S. at 325 (1985).

[3] *Vernonia School Dist. 47J v. Acton*, 515 U.S. at 646 (1995)

[4] Safety, Order and Discipline 103-104.

§1.2 The Fourth Amendment

In the 1985 case, *New Jersey v. T.L.O.*, the Supreme Court determined that the Fourth Amendment, as related to the public school setting, generally governs searches of students and student property in areas that are provided to students by the school for their use. In *T.L.O.* the Court held that public school administrators serve as agents of the government and must comply with the restraints imposed by the Fourth Amendment that states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ."

All school policy that concerns searches of students must conform to the limits described in the Fourth Amendment as interpreted in *T.L.O.* and subsequent court decisions. Student searches must meet the standard of reasonableness as set forth in *T.L.O.*

§1.3 New Jersey v. T.L.O.

New Jersey v. T.L.O. is a landmark case regarding student searches. *T.L.O. articulated the following:*

1. Children in school are protected by the Fourth Amendment.

2. Public school administrators act as representatives of the government rather than exclusively as surrogates for the parents of students.

3. Searches of students by school officials or teachers may be based on reasonable suspicion rather than on probable cause.

4. Search warrants are generally not necessary for school-related searches by school administrators.

The Court further held that the search must be justified at the outset and that the reasonable suspicion requirement applies to student searches. Furthermore, the search must be conducted consistent with the original objective and may not be excessively intrusive based on the student's age and sex.[5]

The standards of *T.L.O.* apply only to searches of public school students conducted by officials or their designees. Sworn law enforcement officers (see Section 3 regarding sworn law enforcement officers) must have probable cause before conducting a search, they generally cannot conduct an individualized search on reasonable suspicion alone.

[5] Jon M. Van Dyke and Melvin M. Sakurai. Checklists for Searches and Seizures in Public Schools. (Saint Paul, West Group, 1999), 1-8, 9.

§1.4 The Doctrine of Reasonable Suspicion

Any decision by a school administrator to search a student implicated the Fourth Amendment. Student searches must comply with constitutional law. Constitutional searches may be implemented when a school official has a "reasonable suspicion" that the law or a school rule has been broken. Reasonable suspicion must be present in order to implement a search, and the reason for searching must relate directly to the law or school rule identified at the onset of the search. In *New Jersey v. T.L.O.*, the Supreme Court held that the standard of "reasonable suspicion" applied to searches of students as conducted by school officials.[6] Since the *1985 T.L.O.* case, Courts have consistently held that school officials operate under the less rigid concept of "reasonable suspicion" as opposed to the concept of "probable cause" that guides searches by sworn law enforcement officers. Courts have increasingly extended to schools the right to control the school environment for the benefit of the school community at large.

The concept of "reasonable suspicion" as outlined in *T.L.O.* allows student searches by school officials if the officials have information that leads them to believe that a student has broken the law or school rule and that the search will yield evidence of a violation. This standard is considerably more flexible than the probable cause requirement. Reasonable suspicion can be created if the school administration has received reliable information from one or more sources.

In conducting a student search, the school official must act in a reasonable way. The school official must first determine that a student search is within the school's legitimate objectives. The official should next consider whether or not the violation is severe enough to warrant a search that invades the student's privacy rights. The official must then consider the age of the student, the area involved, the reasonable proximity of the time and place of the offense, and the invasiveness of the search. The school official must then limit the scope of the search to the evidence sought.

§1.5 The Doctrine of Probable Cause

Historically, the decision to conduct a search of a public school student was based on the premise that "probable cause" existed to warrant the search. Probable cause suggests that there should be a high level of facts specific to the crime to guide the decision to search. Probable cause does not require absolute certainty, only that the facts support the probability of success when considered in their entirety. A sworn law enforcement officer must have probable cause to conduct a search. In addition to probable cause, a sworn law enforcement officer must have a warrant unless there are exigent circumstances that threaten the immediate safety of the student or others. Moreover, a sworn law enforcement officer cannot evade the need for a warrant or probable cause by simply directing or requesting a school official to perform a search.

[6] *T.L.O.* 469 U.S. at 337.

§1.6 Parental Notification

Schools are not required to notify parents prior to conducting a student search. "While functioning in routine fashion something the law refers to as the 'ordinary course of business,' the school does not need to notify or obtain permission from the parent of a student prior to a search…"[7]

A parent's right to be notified, either before or afterwards, of any happening in school is usually limited and discretionary. However, parents should be notified in situations in which failure to do so would create or enhance danger to the student. Parents should be notified whenever a student's opportunity to obtain an appropriate education would be limited and whenever the parent has been promised such notification, whether expressly or implicitly. Such promises can be implied by school rules.[8]

Current standards of practice encourage the involvement of parents in the child's school experience to the extent practical, reasonable, and possible. Whenever a child has been searched, parents or guardians should be notified as soon as practical. As guardians of the child, parents are important to his or her well-being. Community practice and values encourage parental involvement and timely notification.

§1.7 Student Expectations of Privacy

Public school students are considered a group distinct within the general public. Their privacy rights, as protected by the Fourth Amendment, differ from the rights of adults by being more limited in scope. Even though limited, the student's privacy rights are important and must be protected. Every action carried out by school officials in the search process must be thoughtful and respectful insofar as individual circumstances warrant. Every effort must be made to administer policy in order to protect the constitutional rights of students and protect the school division. The guiding concept is always reasonableness.

The privacy rights of public school students are diminished when safety, discipline, and learning are at stake. However, it is important to remember that a student's expectation of privacy may be heightened or lowered, to the extent constitutionally permitted, by the school district's administration of its written student search policy.

SECTION 2. WRITING SCHOOL POLICY

§2.1 School District Policies

Local school boards of trustees should develop a policy that reflects the district's commitment to provide a safe, nondisruptive environment for effective teaching and learning. The school board policy, should be promulgated to the community at large.

[7] Safety, Order, and Discipline 111.
[8] Safety, Order, and Discipline 110.

SECTION 3. ROLES OF SCHOOL AUTHORITIES

§3.1 The School Principal or Designee

Generally, the principal or designee is the school official authorized by school board policy to conduct student searches. The school official should be knowledgeable of the law, school board policy, and trained in proper search techniques. He or she must adhere to stated policy and procedure for random and individualized searches. Steps that lead up to a search should support the least intrusive, most reasonable, and individualized search possible. The school official should respect the individual privacy rights of the individual students.

§3.2 The School Resource Officer (Law Enforcement Officer)

In recent years, school officials have increasingly turned to local law enforcement for assistance with maintaining order in schools. The result has been the emergence of a new type of law enforcement officer: the School Resource Officer. This position, with duties different from those of the usual police officer, requires additional training. School Resource Officers work directly with school personnel and students to reduce the incidence of school problems and law breaking. Assigned to the school site, the visible presence of the sworn law enforcement officer sends a message to the community that educators are committed to and serious about maintaining a safe and stable learning environment.

School Resource Officers may be present at student searches but do not typically conduct searches at the school site. As sworn law enforcement officers, School Resource Officers must have ***probable cause*** to search an individual student; whereas, local school officials are required to meet only the doctrine of reasonable suspicion. A written and published memorandum of understanding between the school division and local law enforcement agencies should define and clarify the responsibilities assigned to the School Resource Officer.

§3.3 Other School Security Personnel

Schools may use personnel to perform school security functions who are not law enforcement officers. These employees typically serve under the guidance of the principal. The security employee is not usually the person designated by the principal to conduct student searches. However, the security employee is often the individual who first identifies the need to search. Because school security employees assist school officials in conducting student searches, they should be trained in appropriate search procedures and knowledgeable of laws and policy that govern student searches.

SECTION 4. GUIDELINES FOR STUDENT SEARCHES

§4.1 Definition of a Student Search

Student searches are an important strategy to detect school policy and law violations. A student search can occur when a school official attempts to discover any thing hidden from view and/or located in a secluded place. Whenever a search of a student is undertaken by a school official, the Fourth Amendment privacy rights of the student must be taken into consideration. An individual search of students by school officials cannot take place unless it has been determined, based on reasonable suspicion, that the search may produce evidence that the law or a school policy has been violated. School officials should remember that as searches become more intrusive, an increasingly higher degree of individualized suspicion must exist.

§4.2 Search of Student Property

When reasonable suspicion exists, school officials may search property belonging to students. Reasonable suspicion requires circumstances that would lead a reasonable person to conclude that the person or persons to be searched are the most likely individuals to be in violation of a law or school policy. Property belonging to students includes items that can be connected to a student, carried by a student, or stored by a student in areas made available to the student by the school. These areas may include lockers, desks, storage bins, parking lots, and other locations. The school may retain access to these areas through policy statements and thereby diminish students' expectations of privacy in them. Prior to initiating a student search, school officials should inform the student of the reason for the search and may request consent to search. If consent is not granted, the search may be conducted anyway if the standard of reasonable suspicion is met.

Searches based upon reasonable suspicion may include:

- Examining a student's person, clothing, and possessions such as handbags, backpack/bookbags, notebooks, books, and other items that can be connected to the student.
- Looking through, handling, or feeling the student's personal possessions.
- Opening any closed containers owned by the student.
- Opening any secured property to which the school has retained possession and access such as lockers, desks, or storage cabinets.
- Opening automobiles.
- Reviewing educational technology/computer use records of students.
- Requiring students to be scanned with metal detectors or to submit to drug screens.

The more secured the area in which the student's property is kept, the higher may be the student's expectation of privacy. Therefore, a search of a locked area could require more specific reasons than would a search of an open desk with its lessened expectation of privacy. Courts are more likely to uphold searches of student property when the schools have lessened students' expectations of privacy through policy and practice. Even where the school has in place policy that requires periodic searches of areas of the schools such as the locker areas, the searches must be conducted in accordance with that policy.

§4.3 Locker Searches

Locker searches generally are permissible when supported by policy that is authorized and publicized to the students and their parents. Through policy and practice, the school retains ownership to certain areas of the school including student lockers. While students can expect a level of privacy when using school lockers, the expectation of privacy can be severely diminished by policy. The student's expectation of privacy is further diminished by the right of the school to control and distribute locks, retain locker combinations as well as to open and repair lockers at any time. Policy should establish that school lockers are for storage of permitted student belongings and may not be used to hide objects or materials that are prohibited by law or school policy.

Suspicionless random locker searches must be actually and consistently random. If a random search produces evidence of school rule or legal violations, it is generally permissible to search the locker further. At times, students may state that the property in question does not belong to them. In order to alert students that they should be attentive to the contents of the lockers, policy should clearly state that students are responsible for the contents of their assigned lockers.

Individualized locker searches are permissible when supported by reasonable suspicion. Reasonable suspicion focuses on individual students and is supported by evidence that justifies the search. The totality of information must consistently point in the direction of a particular student or students and must be corroborated by reliable sources.

§4.4 Computer Searches

School computers, software, and other similar educational technology, including school Internet access records, may be searched by school officials at any time if there exists reasonable suspicion that such search will yield evidence of law or school rule being broken. School policy should define school computer, technology, and Internet use and its limits. Because schools retain possession of their computers and because student use is to be consistent with the educational mission of the school, students should have a highly diminished expectation of privacy in their use of school-site computers. School computer use policies should alert students to the lack of privacy in their use of school computers and software and their obligation to confine such use to the means and methods educationally permitted.

§4.5 Automobile Searches

In order to conduct searches of student automobiles, school officials should have established a diminished expectation of privacy for automobiles through policy statements, the Student Code of Conduct, and the use of parking permits that require both parent and student signatures. Where schools have experienced extraordinary drug or weapons problems, additional control over automobiles may be warranted. For example, where need is documented, school officials might require students to turn in car keys upon arrival at school and pick them up at the end of the day. Generally, however, searches may be implemented by school officials when they have reasonable suspicion that the automobile search will yield

evidence that the student broke the law. Searches must be carried out in such a way as to discover the forbidden item or other evidence using reasonable strategies. Random searches of automobiles may be conducted only if done under a previously established and published, neutral, random search procedure.

§4.6 Search Locations

The locations at which searches of students and student property may be conducted are not confined to the school building or property, but may be wherever the student is involved in a school-sponsored function whether located on the school campus or not. The search, however, must meet the reasonableness standard and be conducted in accordance with school policy.

§4.7 Search of Person

Strip searches of persons are generally considered highly intrusive and should be used only when an extremely serious situation exists requiring immediate action.[9] Strip searches are constitutionally suspect under any circumstances and should only be used in the context of imminent threat of death or great bodily injury to a person or persons.

Strip searches, if conducted, are best conducted by a law enforcement officer of the same sex accompanied by same-sex witnesses. If conducted by a school official, strip searches should be used to avoid imminent threat of death or great bodily injury to an individual or individuals. A strip search constitutes the most extreme type of student search undertaken by school officials and poses the greatest threat of legal challenge for school officials.[10] Body cavity searches should not be undertaken by school officials.

A less intrusive, but still controversial, type of search is the physical "pat-down" in which the student is searched by touching the student while he or she is fully clothed. The "pat-down" search requires that the administrator have established a high level of reasonable suspicion that evidence will be found to corroborate suspicion that a law or school rule has been broken. A "pat-down" search should be conducted and witnessed by same-sex school officials.

[9] Kern Alexander and M. David Alexander, American Public School Law, 4th ed. (Belmont, CA: West/Wadsworth, 1998) 387.

[10] Joseph C. Beckham, "Student Searches in Public Schools." Focus on Legal Issues for School Administrators. n.d.:5.

§4.8 Suspicionless Searches

Suspicionless searches, including group searches, may be conducted if the school officials act in accordance with published local school board policy. The right of school divisions to conduct suspicionless searches has been *upheld in* the Oregon case of *Vernonia v. Acton.* Suspicionless searches can be a reasonable means of ensuring a safe, nondisruptive school environment through deterrence.[11] Such searches, which may be of the student classroom, desk, locker, or automobile, must be random, systematic, non-selective searches implemented according to a pre-determined formula. Group or suspicionless searches, when not random, can embarrass or stigmatize students who may appear to others to be under suspicion.

§4.9 Consent Search

A consent search of a student exists when a student grants the school official permission to search. Under these circumstances, the school official need not demonstrate grounds for reasonable suspicion. A student's consent is valid only if given willingly and with knowledge of the meaning of "consent." Students should be told that they have a right to refuse to be searched, and they should demonstrate an awareness of the risk to themselves involved in granting school officials permission to search. Consent searches may be invalid if the student perceives himself to be at some risk of suspension or other punishment if he does not grant permission for the search. For this reason, school officials may prefer to base their search on reasonable suspicion rather than on student consent.

SECTION 5. ALTERNATIVE SEARCH STRATEGIES

Alternative search strategies generally include the use of trained drug sniffing dogs, metal detectors, or other types of surveillance devices.

§5.1 Searches Utilizing Metal Detectors

Random, suspicionless searches of students may be conducted using metal detectors. Such searches as conducted by school officials must ensure randomness in administering the search. All students may be searched or certain, randomly selected students may be searched. Searches with metal detectors also may be conducted whenever individualized suspicion exists. Searches with metal detectors should be covered by school policy, communicated to students, parents, and the community through the Code of Conduct, and conducted within announced time frames. Failure to do so could negate the policy.

§5.2 Searches Utilizing Trained Dogs

[11] Van Dyke 12-6,7.

The use of trained drug sniffing dogs has generally been upheld by the courts to assist school officials in their efforts to maintain a safe and stable learning environment. Searches that utilize trained drug sniffing dogs are not usually considered "searches" unless a dog is used to sniff individuals instead of property. Searches that are designed to aid school officials in their search for drugs usually represent minimal intrusion and do not usually invoke Fourth Amendment protections. There is usually not a need for individualized suspicion. A canine sniff of students' persons can constitute an individual search. Such canine searches of students have been found to be intrusive, thus triggering full Fourth Amendment protections.

Canine sniffs of student lockers in a sweeping fashion do not initially constitute a "search." If however, the dog alerts to a specific locker, then individualized suspicion to search the specific locker exists. Students may, under school policy, maintain only minimal expectations of privacy in lockers or other school-owned storage areas. School policy should define the ownership of such spaces as belonging to the school thus establishing a diminished expectation of privacy for the student using the space. Likewise, using dogs to sniff around student automobiles in a sweep of the school parking lot ordinarily does not constitute a search.

Educational policy considerations regarding the health and psychological well-being of students also come into play when police trained dogs are brought near students in schools. Sound educational judgment should be used in deciding whether, when, and under what circumstances drug sniffing dogs will be used in schools.

CONCLUSION

School policies regarding searches, particularly those setting forth use of school facilities and random administrative search and deterrence practices should be linked to the Code of Conduct and school mission. Such policies should be published and available to both students and parents. Parental involvement in the development of such policies is good practice and encourages proper implementation. A *safe school environment is a community task.*

I. Controlling Constitutional and Statutory Provisions

A. United States Constitution

The Fourth Amendment to the Constitution of the United States provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable** searches and seizures, shall not be violated. . . ." (Emphasis added.)

This Amendment embodies fundamental restraints on the power of government. It protects citizens from arbitrarily conducted and overly broad searches by government officials. Under the Fourteenth Amendment to the Constitution of the United States, these restraints apply not only to the "laws of Congress," but also to the policies, practices and decisions of state and local government, including public officials, administrators and teachers entrusted with our public school system. *West Virginia State Bd. Of Educ. V. Barnette,* 319 U.S. 624, 637 (1943).

B. Constitution of Idaho

Article I, § 70 of the Constitution of Idaho (1993) provides that "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person and thing to be seized." The requirements under this constitutional section, and the state statutes implementing it, are substantially the same as those contained in the Fourth Amendment to the United States Constitution. State v. Peterson, 81 Idaho 233,340 P2d 444 (1959)

C. Idaho Statutory Provisions

Idaho laws generally prohibit persons from bringing firearms or destructive devices onto school property or to school sponsored events with the exception of a person who lawfully possesses a firearm or deadly or dangerous weapon as an appropriate part of a program an event, activity or other circumstances approved by the board of trustees or if the weapon is secured and locked in his vehicle in an unobtrusive and nonthreatening manner. . *See* ID Code § 18-3302D

II. The Conceptual Framework in the Law

A. Balancing Test Determines Reasonableness

A search entails an invasion of privacy. Whether that invasion is legally permissible or not will depend upon the weight of the factors involved in balancing the individual student's privacy right against the school division's governmental interests.[12] All searches, therefore,

[12] *See generally* Alexander C. Black, Annotation, *Search Conducted By School Official As Violation Of Fourth Amendment Or Equivalent State Constitutional Provision*, 31 A.L.R. 5th 229 (1995).

entail a balancing of competing interests. The Fourth Amendment does not protect all subjective expectations of privacy, but only those privacy expectations that society recognizes as legitimate. "Like members of the public generally, school children enjoy a legitimate expectation of privacy in their persons and effects." *DesRoches by DesRoches v. Caprio*, 156 F.3d 571, 576 (4th Cir. 1998). This expectation remains, as the United States Supreme Court observed, along with the need to maintain order and discipline in school. "Although this Court may take notice of the difficulty of maintaining discipline in the public schools today, the situation is not so dire that students in the schools may claim no legitimate expectations of privacy." *T.L.O.*, 469 U.S. at 338. "A search of a child's person or of a closed purse or other bag carried on her person, no less than a similar search carried out on an adult, is undoubtedly a severe violation of subjective expectations of privacy" which society recognizes as "legitimate." *Id.* at 337-39.

A student's Fourth Amendment right to privacy and security must be weighed against the interest of school officials in maintaining order, discipline, and the security and safety interests of other students. Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere. A proper educational environment requires close supervision of school children, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult. *Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646 (1995). Although students do not "shed their constitutional rights . . . at the school house gate," the nature of students' rights is determined by what is appropriate for children in school. Students within the school environment have a lesser expectation of privacy than members of the general population. But in the public school context, when "carrying out searches and other disciplinary functions . . ., school officials act as representatives of the State, . . . and they cannot claim the parents' immunity from the strictures of the Fourth Amendment." *New Jersey v. T.L.O.*, 469 U.S. 325 at 336-37 (1985). Therefore, school officials' ability to search students and to seize students' belongings is circumscribed by legal principles.

Generally, law enforcement officers must have a search warrant and probable cause,[13] based upon individualized suspicion, before they legally can conduct a search. Even for law enforcement officers, however, these requirements are not absolute. The United States Supreme Court has noted that the Fourth Amendment is flexible and that "neither a warrant nor probable cause, nor, indeed, any measure of individualized suspicion, is an indispensable component of reasonableness in every circumstance." *Nat'l Treasury Employees Union v. VonRaab,* 489 U.S. 656, 665 (1989). School officials are not required to obtain search warrants or to demonstrate probable cause before they search students in school. One important reason for the difference in legal requirements is that the role of the school official

[13] Courts recognize degrees of belief—ranging from the lack of suspicion, through "reasonable suspicion" to "probable cause" to "beyond reasonable doubt." Each degree should be supported by a collection of facts which can be documented. If the method of search is to be more intrusive (for example, drug testing rather than searching lockers), the degree of suspicion required generally increases. If the object of the search poses immediate danger (for example, searching for lethal weapons rather than cigarettes), the degree of suspicion required generally increases. If the individual conducting the search is in a role approaching that of a law enforcement officer (for example, the role of school security officer), the degree of suspicion required generally increases. The suspicion standard required for police to conduct a search is "probable cause."

is significantly different from the role of the law enforcement officer. In scrutinizing whether any search—including one conducted in a public school—is permissible, many factors must be weighed. Chief among those factors are (a) the method of searching, (b) the object of the search, and (c) the role of the individual conducting the search. The interplay and weight of each of these factors generally will determine the propriety of the search.

In the school environment, a search is constitutionally permissible at its inception where the school official has reasonable grounds, based on the totality of the known circumstances, for suspecting that the search will reveal evidence that the violated or is violating either the law or the rules of the school.

B. Reasonable Suspicion Motivating a Search or Seizure

"Reasonableness" is the watchword in this area of the law. Identifying the impetus or reason for the search, its focus, scope and manner can be crucial. "To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing." *Chandler v. Miller,* 117 S. Ct. 1295, 1301 (1997). Fundamental requirements for suspicion-based school searches were set forth by the United States Supreme Court in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). In determining whether an "individualized suspicion of wrong-doing" is present, the following two-pronged test is used:

(1) Whether the search was justified at its inception (that is, whether there were "reasonable grounds for suspecting that the search would turn up evidence that the student [had] violated or [was] violating either the law or the rules of the school"); and
(2) [W]hether the search as actually conducted 'was reasonably related in scope to the circumstances,'" which initially justified it. *T.L.O.*, 469 U.S. at 341, quoting *Terry v. Ohio,* 392 U.S. 1, 20 (1968).[14]

In order to survive constitutional scrutiny, a search must be reasonable not only at its inception, but also in its scope. But the fact that a less intrusive option was available to school officials does not automatically mean that the search method chosen will be found unreasonable. The legal test is whether the search at issue was reasonable. *See Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646 (1995).

C. Acting on Hearsay

"Hearsay" is a permissible way for school officials to receive information to support their reasonable suspicion for a search, especially when reliable or credible informants provide it. *See State v. Moore,* 254 N.J. Super. 295, 603 A.2d 513 (1992) (assistant principal

[14] *T.L.O.* did not hold that individualized suspicion is an essential element of reasonableness for all school searches. . . . [T]he Court cautioned that, as in other contexts, a search conducted in the absence of individualized suspicion would be reasonable only in a narrow class of cases, "where the privacy interests implicated by a search are minimal and where 'other safeguards' are available 'to assure that the individual's reasonable expectation of privacy is not subject to the discretion of the official in the field.'" *DesRoches by DesRoches v. Caprio*, 156 F.3d 571, 575 (4th Cir. 1998) (quoting *T.L.O.* at 342 n.8).

acted on guidance counselor's report from a specific student about drug possession by the searched student); *State v. Biancamano*, 284 N.J. Super. 654, 666 A.2d 199 (App. Div. 1995), *cert. denied,* 143 N.J. 516, 673 A.2d 275 (1996) (vice-principal properly acted on information from "confidential informant").

D. Obtaining Consent

The Fourth Amendment is not violated if a student knowingly and voluntarily consents to a search. All of the circumstances surrounding the consent determine whether it was knowingly and voluntarily given. *See Schneckloth v. Bustamonte,* 412 U.S. 218 (1973). Proving the voluntariness of a student's consent obtained by a school official is often difficult to do with certainty, and school officials have the burden of providing such proof. If a student is a minor (under age 18), that burden will be increased. Even once given, consent may be terminated at any time requiring that the search immediately stop. If the reasonable suspicion standard is met, however, and consent is not obtained, the search may be conducted. *See Desilets on behalf of Desilets v. Clearview Regional Bd. of Educ.,* 265 N.J. Super. 370, 627 A.2d 667 (App. Div. 1993) (consent found given in parental permission slip allowing search of hand luggage student takes on field trip); *In re Corey L.,* 203 Cal. App. 3d 1020, 250 Cal. Rptr. 359 (1st Dist. 1988) (student, in denying allegation, said to school principal "You can search me if you want to"); *RJM v. State,* 456 So. 2d 584 (Fla. App. 1984) (ruling that knife was not voluntarily surrendered where student relinquished it in the course of a search which, from its inception, was not based on reasonable suspicion); *State ex rel. Juvenile Dep't v. Doty,* 138 Or. App. 13, 906 P.2d 299 (1995) (search of backpack was permissible where student consented to that search by vice-principal, but student refused to allow search of his person).

III. Special Considerations for Various Types of Searches

A. Group Searches Prompted by Reasonable Suspicion

The requirement for individualized reasonable suspicion does not mean that the suspicion must be confined to only one person at a time. In some situations a group of students may be so small that the entire group may be searched without violating the individualized suspicion requirement. *DesRoches by DesRoches v. Caprio*, 156 F.3d 571, (4th Cir. 1998). [S]ufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment." *T.L.O.,* 469 U.S. at 346. *See Smith v. McGlothin,* 119 F.3d 786 (9th Cir. 1997) (vice-principal of high school acted legally on reasonable suspicion when he ordered a group of 20 students to remain in a room for up to two hours to be searched in an attempt to discover which of them had been smoking); *Thompson v. Carthage Sch. Dist.*, 87 F.3d 979 (8th Cir., 1996).(upholding search of all male students by requiring them to empty their pockets and scanning them with metal detector to find knives after finding school bus seats cut).

B. Mass "Administrative" Searches Conducted Without "Individualized Suspicion"

The United States Supreme Court uses a balancing test, evaluating and weighing the following considerations when it determines whether a suspicionless mass "administrative" search is proper:

1. the government's interest in achieving its objectives;
2. the limited intrusion of privacy interests of the person searched; and
3. effectiveness of this type of search in achieving the government's objective.

The legitimate governmental interest in mass "administrative" searches is usually deterrence. "Suspicionless" searches should be conducted only pursuant to neutral, formally promulgated board of education directives, administered on blanket, non-discretionary bases that utilize mechanical screening where student expectations of privacy have been reduced through notice, or other similar circumstance; for example, metal detectors at school entrances are a permissible means to deter those entering from bringing weapons into school facilities. *See People v. Pruitt,* 278 Ill. App. 3d 194, 662 N.E. 2d 540 (1st Dist. 1996), *appeal denied*, 667 N.E.2d 1061 (1996); *People v. Dukes,* 151 Misc. 2d 295, 580 N.Y.S.2d 850 (City Crim. Ct. 1992).[15]

C. Locker Searches

In *T.L.O.*, the United States Supreme Court did not specifically address locker searches, but it did note the disagreement in lower courts regarding the circumstances that must be present for school officials to search an individual locker without the student's consent. In a footnote it cited three cases: *Zamora v. Pomeroy,* 639 F.2d 662 (10th Cir. 1981) (school and student had joint control of locker which gave school official the right to inspect it); *People v. Overton,* 24 N.Y.2d 522, 249 N.E.2d 366 (1969) (school administrators could consent to the search of a student's locker); *State in Interest of T.L.O.*, 94 N.J. 331, 463 A.2d 934 (1938) (student has legitimate expectation of privacy in his school locker). All of these cases cited by the Supreme Court involved individualized suspicion. Many schools, as part of a neutral search policy, conduct "administrative" suspicionless random locker searches, about which students (and their parents and guardians) are notified at least annually that school lockers or other storage facilities provided for use by students will be regularly searched on a random selection or lottery basis. This eliminates the stigma attached to selecting individuals on the basis of a particularized suspicion. *See Desilets on behalf of Desilets v. Clearview Regional Bd. of Educ.*, 265 N.J. Super. 370, 627 A.2d 667 (App. Div. 1993); *In the Interest of Isiah B.,* 500 N.W.2d 637, 644 (Wis. 1993) (Abrahamson, J., concurring and dissenting).

Schools can heighten or lower students' expectations of privacy by how the locker search policy is managed. If the school treats the lockers as student property, that increases students' expectations of locker privacy. If, however, written school policies make clear (both to students and their parents and guardians) that the student's possession of the locker is not

[15] *See* R.J. Davis, Annotation, *Validity, Under Federal Constitution, of Search Conducted As Condition of Entering Public Building,* 53 A.L.R. Fed. 888.

exclusive and that the school retains ownership and control of the locker, a student's expectations of privacy in use of the locker will be lessened.

See Commonwealth v. Carey, 407 Mass. 528, 554 N.E.2d 1199 (1990) (assistant principal called police after he was told by a teacher who heard that a student brought a gun to school, and then school officials searched the student's locker for the gun, and found it, while police questioned student); *Commonwealth v. Snyder,* 413 Mass. 521, 597 N.E.2d 1363 (1992) (upholding warrantless locker search where school principal acted on information from a student that the subject tried to sell him drugs and had placed the drugs in a bookbag); *Coronado v. State*, 806 S.W.2d 302 (Tex. App. Texarkana 1991), *rev'd,* 835 S.W.2d 636 (Tex. Crim. App. 1992); *In Interest of Isiah B.*, 500 N.W.2d 637 (Wis. 1993), *cert. denied, Isiah B. v. Wis*, 510 U.S. 884 (1993) (school policy and notices to students retain lockers as school property in which students cannot have expectation of privacy and random search revealing a gun and cocaine was reasonable); *In re Joseph G,*, 32 Cal. App. 4th 1735 (1995) (search of student locker for handgun was prompted by information from the mother of another student and school official saw student placing bookbag in his locker); *In the Interest of Dumas*, 375 Pa. Super. 294, 515 A.2d 984 (1986) (invalidating search of student locker for cigarettes, as unjustified at the onset); *R.D.L. v. State,* 499 So. 2d 31 (Fla. Dist. Ct. App. 2d Dist. 1986) (upholding search of locker by assistant principal for stolen meal tickets where student was seen in possession of articles from area where the meal tickets were kept); *S.C. v. State,* 583 So. 2d 188 (Miss. 1991) (student has expectations of privacy in locker, but when assistant principal, acting on informant's tip, asked student to come from class and open his locker, and two guns were found, search was ruled proper); *Singleton v. Bd. of Educ. USD 500*, 894 F. Supp. 386 (D. Kan. 1995) (factors supporting the search included informant's statement that student had stolen large amount of money, and school policy statement that the student's possession of locker was not exclusive); *State v. Brooks,* 43 Wash. App. 560, 718 P.2d 837 (1986) (upholding search of student locker, and specifically a metal box in it, where school officials had tips that student was dealing in drugs); *State v. Joseph T.,* 336 S.E.2d 728 (W. Va. 1985) (upholding search by assistant principal who smelled alcohol on student's breath, and after questioning student, searched student's locker for alcohol but found cigarette making paraphernalia instead); *State v. Slattery,* 56 Wash. App. 820, 787 P.2d 932 (1990) (upholding school officials' search first of student locker, which did not reveal drugs, then student's car trunk and a locked briefcase, which did reveal drugs, after informant told them that student was dealing in drugs from school parking lot). *See also State v. Michael G.,* 106 N.M. 644, 748 P.2d 17 (Ct. App. 1987).

D. Strip Searches[16]

A "strip search" is highly intrusive of program rights. *See generally, Taylor v. Commonwealth*, 28 Va. App. 638, 507 S.E.2d 661 (1998) (strip search prohibited); (*Gilmore v. Commonwealth*, 27 Va. App 320, 498 S.E.2d 464 (1998) (body cavity search prohibited). In at least one case cited by the United States Supreme Court in a footnote in *New Jersey v. T.L.O.*, a court expressly held that a higher standard of justification (approaching full probable

[16] *See* Va. Code § 19.2-59.1. *See also* J.H. Derrick, Annotation, *Fourth Amendment As Prohibiting Strip Searches of Arrestees or Pretrial Detainees*, 78 A.L.R. Fed. 201.

cause) applies where a search is "highly intrusive." *See M. v. Anker*, 607 F.2d 588, 589 (2d Cir. 1979). The *Anker* Case involved a "strip search" of a female student for some unidentified stolen object. Further, in *T.L.O,* the United States Supreme Court expressly warned that the scope of a search conducted in school must not be "excessively intrusive in light of . . . the nature of the infraction." 105 S. Ct. at 733. Some states, through legislation, have banned strip searches in the school context. Courts are mixed in approving the legality of strip searches.[17] *See Williams v. Ellington,* 936 F.2d 881 (6th Cir. 1991) (upholding strip search of student suspected of drug possession, where student informants claimed subject possessed drugs, locker search found nothing, and the female student was searched by a female official in the presence of another female school employee); *State ex. rel. Galford v. Mark Anthony B.*, 189 W. Va. 538, 433 S.E.2d 41 (1993) (invalidating as too intrusive under the circumstances the search of a 14-year-old suspected of stealing $100 from a teacher's purse); *Cornfield v. Consolidated High School Dist. No. 230*, 991 F.2d 1316 (7th Cir. 1993) (upholding the action of school officials who suspected a 16-year-old student of "crotching" drugs and ordered him to change into a gym uniform while they searched his street clothes in a search which occurred in a locked locker room, after the student was reported to be dealing in and using drugs, and had admitted to "crotching" drugs previously when his mother's house was searched); *Cales v. Howell Public Schools*, 635 F. Supp. 454 (E.D. Mich. 1985) (invalidating search of female tenth grader by female assistant principal in the presence of a female security guard where student was told to strip to her underwear); *Oliver by Hines v. McClung*, 919 F. Supp. 1206 (N.D. Ind. 1995) (denying teachers immunity from liability after they strip searched seventh-grade girls to recover $4.50).

E. Backpack and Bookbag Searches

Students can have a legitimate expectation of privacy in their bookbags and backpacks. *DesRoches by DesRoches v. Caprio,* 156 F.3d 571 (4th Cir. 1998). As the United States Supreme Court noted in *T.L.O.*, "schoolchildren may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items merely by bringing them onto school grounds." *Id*. at 339. Searches of such items as bookbags and backpacks should either be supported at their inception by "individualized suspicion" or be conducted pursuant to a neutral, blanket screening policy wherein "the privacy interests implicated by a search are minimal and where 'other safeguards' are available 'to assure that the individual's reasonable expectation of privacy is not subject to the discretion of the official in the field.'" *Id.* at 342 n.8 (quoting *Delaware v. Prouse*, 440 U.S. 648, 654-55 (1979). *See Berry v. State,* 561 N.E.2d 832 (Ind. Ct. App. 1990); *F.P. v. State,* 528 So. 2d 1253 (Fla. Dist. Ct. App. 1988); *In re Devon T.,* 85 Md. App. 673, 584, A.2d 1287 (1991); *Irby v. State,* 751 S.W.2d 670 (Tex.

[17] For example, the New Jersey Supreme Court has strongly criticized the use of strip searches in schools, saying: "It does not require a constitutional scholar to conclude that a nude search of a thirteen-year-old child is an invasion of constitutional rights of some magnitude. More than that: it is a violation of any known principle of human decency. Apart from any constitutional readings and rulings, simple common sense would indicate that the conduct of the school officials in permitting such a nude search was not only unlawful but outrageous under 'settled indisputable principles of law.'" *State in Interest of T.L.O.*, 94 N.J. 331, 344 n.6 (1983), quoting from *Doe v. Renfrow*, 631 F.2d 91, 92-93 (7th Cir. 1980), *cert. denied,* 451 U.S. 1022 (1981).

App. Eastland 1988); *In re Appeal in Pima County Juvenile Action,* 152 Ariz. 431, 733 P.2d 316 (Ct. App. 1987); *In re Ronnie H.*,198 A.D.2d 415, 603 N.Y.S.2d 579 (1993); *People in Interest of P.E.A.*, 754 P.2d 382 (Colo. 1988).

F. Searches of Automobiles

Vehicles, unlike lockers, are not school property. They are often, however, parked on school property where parking may be made a privilege, rather than a right, and where consent to vehicle search may be made a condition for obtaining a parking permit.

G. Random Drug Testing[18]

In *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995), the United States Supreme Court upheld a school district's random drug testing program of student athletes. The school, in response to an increasing drug problem, had developed special classes and speakers' programs regarding the problems of drug abuse. Despite these efforts, students continued to glamorize drug use and classroom disruptions increased three-fold. Parent-teacher meetings provided unanimous approval for the random drug testing of student athletes. The program was upheld (6-3) by the United States Supreme Court because it was narrowly tailored to protect students who choose to play sports and the "role model" effect of student athletes' drug use is important in deterring drug use among children. *See also Miller v. Wilkes,* 172 F.3d 547 (8th Cir. 1999) (upholding under Fourth and Fourteenth Amendments a policy of random urine testing of students for the presence of controlled substances and alcohol, with disqualification from extra activities as a sanction for refusal to submit to a test or for testing positive); *Todd v. Rush County Schools,* 133 F.3d 984 (7th Cir. 1998), *reh'g en banc, denied*, 139 F.3d 571 (7th Cir. 1998), *cert denied*, 119 S. Ct. 68 (1998) (upholding school district policy requiring random drug tests for all students participating in extracurricular activities); *Willis by Willis v. Anderson Community Sch. Corp*, 158 F.3d 415 (7th Cir. 1998), *cert. denied,* _____U.S. _____, 119 S. Ct. 1254 (1999) (overturning as violative of the Fourth Amendment a school division's policy that required drug testing of all suspended students, regardless of their offense).

H. Use of Trained Dogs to Detect Narcotics[19]

In *United States v. Place,* 462 U.S. 696, 103 S. Ct. 2637 (1983), the United States Supreme Court held that the use by law enforcement officers of a drug-detector dog to sniff the *exterior surface of a container* was not a search. *See also U.S. v. Jeffus*, 22 F.3d 554 (4th Cir. 1994). Nevertheless, use of drug sniffing dogs in schools requires planning and sensitivity because dog sniffs can constitute searches where dogs are used to sniff persons. A

[18] *See* Kathleen M. Door, J.D., Annotation, *Validity, Under Federal Constitution of Regulations. Rules, or Statutes Allowing Drug Testing of Students,* 87 A.L.R. Fed. 148.

[19] *See generally* B. L. Porto, Annotation, *Use of Trained Dog to Detect Narcotics or Drugs as Unreasonable Search in Violation of Fourth Amendment, 150 A.L.R., Fed 399.*

dog handler should not allow a scent dog to come into direct contact with students, except as part of an assembly or classroom demonstration where the handler is certain that the dog's adverse to students, and the students' interaction with the dog can be controlled. *Jones v. Latexo Indep. Sch. Dist.,* 499 F. Supp 223 (E.D. Tex. 1980) (teams of drug sniffing dogs sniffing closely to students, without administrators having individualized suspicion, violated students' privacy because of threatening presence of animals). One court has found that allowing the trained dog to sniff the air around students' persons and desks does not violate the students' right to privacy. *See Doe v. Renfrow,* 475 F. Supp. 1012 (N.D. Ind. 1979), *aff'd in part and remanded in part,* 631 F.2d 91 (7th Cir. 1980), *cert. denied,* 451 U.S. 1022 (1981) (non-intrusive "search" by drug-trained dogs was not a "search" under the Fourth Amendment, but was preliminary to an individualized search). This decision (*Renfrow)* has, however, been severely criticized. *See Horton v. Goose Creek Indep. Sch. Dist.,* 690 F.2d 470 (5th Cir. 1982), *cert. denied,* 463 U.S. 1207 (1983) (use of drug-trained dogs to closely sniff students violated Fourth Amendment, but use of dogs to sniff automobiles and lockers did not). *See also Zamora v. Pomeroy,* 639 F.2d 662 (10th Cir. 1981) (upholding use of dogs in the exploratory sniffing of lockers, the school having given notice at the beginning of the year that the lockers were joint student/school property and would be opened periodically by school officials); *Commonwealth v. Cass,* 709 A.2d 350, 352-3, 362 (Pa. 1998) (upholding use of drug-detection dogs to conduct a schoolwide locker inspection where the dogs were a screening device to determine which of the 2,000 school lockers would be opened based upon the individualized reasonable suspicion created by the trained dog's reaction).

APPENDIX C

HELPFUL

RESOURCES

APPENDIX C:

HELPFUL RESOURCES

PUBLICATIONS

The Appropriate and Effective Use of Security Technologies in U.S. Schools: A Guide for Schools and Law Enforcement Agencies by Mary W. Green (Research Report, Washington, DC: U.S. Department of Justice, National Institute of Justice, September 1999). Document can be downloaded from the NIJ website at http://www.ojp.usdoj.gov/nij or ordered from the National Criminal Justice Reference Service (NCJ 178265).

Creating Safe and Drug-Free Schools: An Action Guide. (U.S. Department of Education and U.S. Department of Justice, September 1996). Includes Chapters on "Searches for Weapons and Drugs" and "Drug Testing Student Athletes." Document can be downloaded from Department of Education website at http://www.ed.gov/

Jon M. Van Dyke and Melvin M. Sakurai, ***Checklists for Searches and Seizures in Public Schools***, West Group (1999)

National School Safety Center, ***Student Searches and the Law; An Administrator's Guide to Conducting Legal Searches on School Campuses*** (1995)

Selected publications available from the National School Boards Association:

- ***A School Law Primer: Part II*** (March 2000)
- ***School Law in Review 2000***
- ***Desk Reference on Significant U.S. Supreme Court Decisions Affecting Public Schools*** (Revised Edition January2000)
- ***Legal Guidelines for Curbing School Violence***